PROMOTIONS AND APPOINTMENTS IN THE NAVY

Benjamin Dutton, jr., to be captain.
Halford R. Greenlee to be captain.
Reed M. Fawell to be captain.
Henry T. Settle to be commander.
Augustine H. Gray to be commander.
Ward P. Davis to be lieutenant commander.
Edward H. Jones to be lieutenant commander.
Harold F. Pullen to be lieutenant.
Bradford Bartlett to be lieutenant.
Ellwood E. Burgess to be lieutenant.
Donald R. Eldridge to be lieutenant.
Earl V. Sherman to be lieutenant.
Edmonston E. Coil to be lieutenant.
Edward R. Gardner to be lieutenant.
John Connor to be lieutenant.
George F. Watson to be lieutenant.
Austin S. Keeth to be lieutenant.
Gus R. Berner, jr., to be lieutenant.
Waldo Tullsen to be lieutenant (junior grade).
Henry T. Brian to be lieutenant (junior grade).
Frederick P. Williams to be lieutenant (junior grade).
Thomas J. Kimes to be lieutenant (junior grade).
Ernest J. Davis to be lieutenant (junior grade).
John H. Lewis to be lieutenant (junior grade).
Lewis M. Markham, jr., to be lieutenant (junior grade).
Winthrop E. Terry to be lieutenant (junior grade).
John C. Hammock to be lieutenant (junior grade).
Robert M. Kennedy to be medical director.
Marson W. Mangold to be dental surgeon.
Murray W. Clark to be assistant paymaster.
Herbert C. Borne to be chief pay clerk.
Claude W. Hamilton to be chief pay clerk.
Thomas W. Shea to be chief pay clerk.

SENATE

THURSDAY, *May 9, 1929*

(Legislative day of Tuesday, May 7, 1929)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Mr. McNARY. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Allen	Frazier	La Follette	Simmons
Ashurst	George	McKellar	Smoot
Barkley	Gillett	McMaster	Steck
Bingham	Glass	McNary	Steiwer
Black	Glenn	Metcalf	Stephens
Blaine	Goff	Moses	Swanson
Blease	Goldsborough	Norbeck	Thomas, Idaho
Borah	Gould	Norris	Thomas, Okla.
Brookhart	Greene	Nye	Townsend
Broussard	Hale	Oddie	Trammell
Burton	Harris	Overman	Tydings
Capper	Harrison	Patterson	Tyson
Caraway	Hastings	Phipps	Vandenberg
Connally	Hatfield	Pine	Wagner
Copeland	Hawes	Pittman	Walcott
Couzens	Hayden	Ransdell	Walsh, Mass.
Cutting	Hebert	Reed	Walsh, Mont.
Dale	Heflin	Robinson, Ark.	Warren
Deneen	Howell	Robinson, Ind.	Waterman
Dill	Johnson	Sackett	Watson
Edge	Kean	Schall	Wheeler
Fess	Keyes	Sheppard	
Fletcher	King	Shortridge	

Mr. DILL. I desire to announce that my colleague [Mr. JONES] is absent by reason of illness.

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a memorial of sundry citizens of Braintree and Randolph, Vt., remonstrating against the adoption of any calendar change affecting the continuity of the weekly cycle, which was referred to the Committee on Foreign Relations.

He also laid before the Senate a resolution adopted by the Pacific Coast Shoe Travelers' Association, favoring a reduction of 50 per cent in the Federal tax on earned incomes, which was referred to the Committee on Finance.

He also laid before the Senate resolutions adopted by the board of trustees Nebraska Farm Bureau Federation, opposing the imposition of tariff duties upon manufactured lumber products or logs, which were referred to the Committee on Finance.

He also laid before the Senate resolutions adopted by the Federal Bar Association, favoring the granting of increased annuities to retired civil-service employees and also a reasonable pay increase to Federal employees by the device of restoring a salary step in the civil-service grades, etc., which were referred to the Committee on Civil Service.

He also laid before the Senate resolutions adopted by sundry citizens of Chicago, Cook County, and the State of Illinois, who served in the armed forces of the United States during the World War, favoring the prompt making of appropriations to provide ample hospital facilities, medical care, and treatment for incapacitated ex-service men and women, which were referred to the Committee on Finance.

He also laid before the Senate resolutions adopted at a mass meeting (comprising approximately 3,000 people and representing about 100 different societies with a membership of 200,000) at Orchestra Hall, Chicago, Ill., favoring the repeal of the national-origins clause of the existing immigration law and a return to the previous immigration policy based on the census of 1890, etc., which were referred to the Committee on Immigration.

He also laid before the Senate a joint resolution of the Legislature of the State of Wisconsin, memorializing Congress to enact legislation continuing the Federal appropriations for maternity and infancy welfare, which was referred to the Committee on Education and Labor. (See joint memorial printed in full when presented May 6, 1929, by Mr. LA FOLLETTE, page 869, CONGRESSIONAL RECORD.)

He also laid before the Senate the following joint memorial of the Legislature of the Territory of Alaska, which was referred to the Committee on Post Offices and Post Roads:

House Joint Memorial 6 (by Mr. McDonald)

LEGISLATURE OF THE TERRITORY OF ALASKA,
NINTH SESSION.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialist, the Legislative Assembly of the Territory of Alaska, respectfully represents—

That the construction and existence of a highway for automobile travel between Seattle, Wash., and Fairbanks, Alaska, passing through British Columbia and Yukon territory, would be of great benefit to both the United States and Canada, and your memorialist prays that appropriate steps be taken by the Government of the United States looking to the appointment of a commission or other representatives by the Canadian Government to confer with the Board of Road Commissioners for Alaska (War Department) on the subject of the said proposed international road and plans for its construction.

That Alaska, with an area of approximately one-fifth that of the continental United States, awaits further development. The means of transportation in the Territory are still inadequate, although its coasts are visited by ocean-going ships, its interior is penetrated for a distance by railroads, and its rivers in their circuitous courses afford access to an additional portion of its vast domain.

Stretching from Alaska's eastern boundary to the northern boundary of the United States are the Yukon territory and British Columbia, also largely undeveloped for a major portion of their enormous extent. The overland distance from Fairbanks, the geographic center of Alaska, to Seattle via the Yukon territory and British Columbia, is approximately 1,800 miles. Along this distance 900 miles of automobile roads have been constructed, and there are 200 miles of wagon road which can easily be brought up to the standard of an automobile highway. The distance of 700 miles remaining presents no serious construction difficulties; it is estimated that a gravel-surfaced road 16 feet wide can be built for $7,000,000. A highway for automobile travel extending from Seattle to Fairbanks through the great frontiers of Canada and the United States will furnish both these countries with additional means for exploring their great undeveloped mineral wealth; it will provide an opportunity for hundreds of thousands to satisfy their ambition for auto travel through one of nature's most scenic wonderlands; it will bring prosperity to British Columbia, the Yukon territory, and Alaska, and at the same time will bring rich returns to both Canada and the United States for their investment; it will be the line of travel over which, by airplane, a new and valuable commerce with Asia may be established and maintained.

And your memorialist will ever pray.

Passed by the house of representatives April 12, 1929.

R. C. ROTHENBURG,
Speaker of the House.

Attest:

ROBERT C. HURLEY,
Clerk of the House.

Passed by the senate April 17, 1929.

WILL A. STEEL,
President of the Senate.

Attest:

CASH COLE,
Secretary of the Senate.

The VICE PRESIDENT also laid before the Senate the following joint resolution of the Legislature of the State of Minnesota, which was referred to the Committee on Irrigation and Reclamation:

Resolution 17, being S. F. 1227

Joint resolution memorializing Congress for the adoption of a pending measure for the relief of landowners burdened by drainage assessments

Whereas under present agricultural conditions the demand upon landowners for the payment of interest and installments of principal upon drainage assessments aggravates existing financial depression in agricultural areas, and a bill now pending in Congress, House file 14116, Senate file 4689, contemplates the creation of a revolving fund from which the Secretary of the Interior is authorized to loan to counties and other drainage districts the amount of their outstanding bonds, to be repaid at the end of 40 years without interest, thereby relieving landowners of the burden of present payment of these obligations:

Resolved, That the Legislature of the State of Minnesota hereby urges upon the Congress of the United States the early passage of this pending measure as a measure of needed relief from existing agricultural depression.

W. I. NOLAN,
President of the Senate.
JOHN A. JOHNSON,
Speaker of the House of Representatives.

Passed the senate the 17th day of April, 1929.

G. H. SPAETH,
Secretary of the Senate.

Passed the house of representatives the 18th day of April, 1929.

JOHN I. LEVIN,
Chief Clerk House of Representatives.

Approved April 20, 1929.

THEODORE CHRISTIANSON,
Governor of the State of Minnesota.

Filed April 22, 1929.

MIKE HOLM,
Secretary of State.

The VICE PRESIDENT also laid before the Senate the following joint resolution of the Legislature of the State of Minnesota, which was referred to the Committee on Immigration:

Resolution 18—H. F. 1201

Joint resolution memorializing the Congress of the United States to repeal the national-origins clause of the immigration act of 1924

Whereas the immigration act of 1924, by the provisions of the national-origins clause therein contained, fixes the quotas of immigrants from foreign countries in an unsatisfactory manner, in that—

(1) It is impractical because the intermixture of racial stocks in the United States since the year 1790 leaves the national origins of the present population in inextricable confusion and makes impossible a proper distribution and valuation of those origins;

(2) It treats unfairly certain nations in the north of Europe whose nationals played an important part in the development of the great Northwest, which section is still largely inhabited by them and their descendants;

(3) It unfairly increases the quotas from certain other European countries whose nationals have immigrated to the United States much more recently and are believed to be less adaptable to the climatic, economic, and social conditions of this country; and

Whereas immigration quotas apportioned according to the nationality of the foreign born in the United States in the year 1890 would be fair to all nations and its consequences most beneficial to the interests of our own country: Therefore be it

Resolved by the house of representatives (the senate concurring), That the Congress of the United States, at its impending special session, be, and it hereby is, urgently requested to repeal the national-origins clause of the immigration act of 1924, and substitute therefor an apportionment of immigration quotas on the basis of foreign-born population in the year 1890; be it further

Resolved, That a certified copy of this resolution be transmitted to the President of the United States, the Vice President of the United States, to the Speaker of the House of Representatives of the Congress of the United States, and to each Representative in Congress from the State of Minnesota.

JOHN A. JOHNSON,
Speaker of the House of Representatives.
W. I. NOLAN,
President of the Senate.

Passed the house of representatives the 22d day of April, 1929.

JOHN I. LEVIN,
Chief Clerk of the House of Representatives.

Passed the senate the 22d day of April, 1929.

G. H. SPAETH,
Secretary of the Senate.

Approved, April 23, 1929.

THEODORE CHRISTIANSON, *Governor.*

Filed April 23, 1929.

MIKE HOLM, *Secretary of State.*

I, Mike Holm, secretary of state of the State of Minnesota, do hereby certify that I have compared the annexed copy with record of the original resolution in my office of H. F. No. 1201, being Resolution 18, laws 1929, and that said copy is a true and correct transcript of said resolution and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State at the capitol, in St. Paul, this 24th day of April, A. D. 1929.

[SEAL.]

MIKE HOLM, *Secretary of State.*

Mr. GOFF presented the following telegram, which was ordered to lie on the table and to be printed in the RECORD:

CLARKSBURG, W. VA., *May 9, 1929.*

Senator GUY D. GOFF,
Washington, D. C.:

We urge you to use every influence in securing reinstatement of fruits and vegetables in the farm relief bill so that they will receive full benefits of every provision therein.

THOMAS R. BENNETT,
Executive Secretary West Virginia Farm Bureau.

Mr. HATFIELD presented the following telegram, which was ordered to lie on the table and to be printed in the RECORD:

MARTINSBURG, W. VA., *May 9, 1929.*

Senator H. D. HATFIELD:

We strenuously object discrimination against fruit and vegetable producers and respectfully request reinstatement fruit and vegetable to secure full benefit all provisions farm relief bill.

GOLD FRUIT ASSOCIATION,
W. A. GOLD, *President.*
Mason City, W. Va.

REPORT OF THE FINANCE COMMITTEE

Mr. SMOOT, from the Committee on Finance, to which was referred the bill (S. 310) to amend section 5 of the second Liberty bond act, as amended, reported it without amendment and submitted a report (No. 9) thereon.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. STEPHENS:

A bill (S. 1015) to amend the act entitled "An act conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Choctaw and Chickasaw Indians may have against the United States, and for other purposes," approved June 7, 1924;

A bill (S. 1016) for the relief of Charles B. Cameron, Frank K. Ethridge, and Hardy R. Stone;

A bill (S. 1017) for the relief of J. A. Teat, F. E. Leach, and J. L. McMillan; and

A bill (S. 1018) for the relief of Charles J. Ferris, major, United States Army, retired; to the Committee on Claims.

By Mr. GREENE:

A bill (S. 1019) for the extension and completion of the United States Capitol; to the Committee on Public Buildings and Grounds.

By Mr. GOFF:

A bill (S. 1021) to extend benefits under the World War veterans' act, 1924, as amended, to the dependents of the late Leonidas B. Linger; to the Committee on Finance.

A bill (S. 1022) granting an increase of pension to William C. Milliner (with accompanying papers);

A bill (S. 1023) granting an increase of pension to Nancy H. Cunningham;

A bill (S. 1024) granting a pension to Charles D. Booth;

A bill (S. 1025) granting a pension to Walter Fallen;

A bill (S. 1026) granting an increase of pension to Elizabeth Thomas; and

A bill (S. 1027) granting a pension to Belle Brown; to the Committee on Pensions.

By Mr. SHORTRIDGE:

A bill (S. 1028) authorizing the award of campaign insignia to war correspondents and war artists;

A bill (S. 1029) to readjust the pay of certain warrant officers and retired enlisted men;

A bill (S. 1030) for the relief of Edwin Black;

A bill (S. 1031) for the relief of Robert E. Blair;

A bill (S. 1032) for the relief of Frank Christ; and

A bill (S. 1033) for the relief of George H. Clayberger; to the Committee on Military Affairs.

By Mr. DENEEN:

A bill (S. 1034) to provide for a survey of a route for the construction of a highway connecting certain places associated with the life of Abraham Lincoln; to the Committee on Agriculture and Forestry.

A bill (S. 1035) to exempt from taxation certain property of the National Society of the Sons of the American Revolution in Washington, D. C.; to the Committee on the District of Columbia.

A bill (S. 1036) to extend the times for commencing and completing the construction of a bridge across the Ohio River at or near Shawneetown, Gallatin County, Ill., and a point opposite thereto in Union County, Ky.; to the Committee on Commerce.

A bill (S. 1037) granting an increase of pension to Ellen McFarland; to the Committee on Pensions.

A bill (S. 1038) for the relief of James M. Winston; to the Committee on Military Affairs.

A bill (S. 1039) for the relief of C. L. Beardsley;

A bill (S. 1040) for the relief of Mildred Lane;

A bill (S. 1041) for the relief of John Brown; and

A bill (S. 1042) for the relief of Mary Altieri; to the Committee on Claims.

By Mr. WHEELER:

A bill (S. 1043) granting an increase of pension to Joseph C. Petres; and

A bill (S. 1044) granting an increase of pension to James Snowden; to the Committee on Pensions.

By Mr. PHIPPS:

A bill (S. 1045) for the relief of Sheldon R. Purdy; to the Committee on Post Offices and Post Roads.

By Mr. HALE:

A bill (S. 1046) for the relief of the State of Maine and the city of Portsmouth, N. H.; to the Committee on Naval Affairs.

By Mr. CAPPER:

A bill (S. 1047) for the relief of Rosa E. Plummer; to the Committee on Claims.

By Mr. STEPHENS:

A joint resolution (S. J. Res. 35) consenting that certain States may sue the United States, and providing for trial on the merits in any suit brought hereunder by a State to recover direct taxes alleged to have been illegally collected by the United States during the years 1866, 1867, 1868, and vesting the right in each State to sue in its own name; to the Committee on Claims.

COMPENSATION FOR UNITED STATES EMPLOYEES

Mr. BLAINE. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the bill (S. 622) to amend an act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," as amended. I make this request for the purpose of having the bill indefinitely postponed and substituting another bill in its stead.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered. Senate bill 622 will be indefinitely postponed.

Mr. BLAINE. I introduce another bill in its place.

The bill (S. 1020) to amend an act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, was read twice by its title and referred to the Committee on the Judiciary.

CHANGES OF REFERENCE

On motion of Mr. NYE, the Committee on Public Lands and Surveys was discharged from the further consideration of the bill (S. 53) to create a national military park at and in the vicinity of Kennesaw Mountain, in the State of Georgia, and for other purposes, and it was referred to the Committee on Military Affairs.

Also, on motion of Mr. NYE, the Committee on Public Lands and Surveys was discharged from the further consideration of the bill (S. 63) to amend section 13, chapter 431, of an act approved June 25, 1910 (36 Stat. L. 855), so as to authorize the Secretary of the Interior to issue trust and final patents on lands withdrawn or classified as power or reservoir sites, with a reservation of the right of the United States or its permittees to enter upon and use any part of such land for reservoir or power-site purposes, and it was referred to the Committee on Indian Affairs.

AMENDMENTS TO FARM RELIEF BILL

Mr. HAYDEN and Mr. WATERMAN each submitted an amendment and Mr. SHORTRIDGE submitted three amendments intended to be proposed by them, respectively, to Senate bill 1, the farm relief bill, which were severally ordered to lie on the table and to be printed.

"POINTS OF HISTORICAL INTEREST IN THE NATIONAL CAPITAL" (S. DOC. NO. 10)

Mr. VANDENBERG. Mr. President, last week the Senate adopted a report from the Committee on Printing covering the reprint of a pamphlet entitled "Points of Historical Interest in the National Capital." Since the order was made two or three historical corrections have been found to be necessary in the text. It is deemed advisable that those corrections should be made before the reprint occurred. This requires renewed action by the Senate. I therefore present the following resolution and ask unanimous consent for its immediate consideration.

The VICE PRESIDENT. Is there objection?

There being no objection, the resolution (S. Res. 57) was read, considered, and agreed to, as follows:

Resolved, That the action of the Senate on April 30, 1929, in agreeing to the resolution (S. Res. 45) to print additional copies of the publication entitled "Points of Historical Interest in the National Capital" be rescinded, and that said publication be printed, with corrections and additions, as a Senate document of the Seventy-first Congress, with illustrations, and that 5,000 additional copies be printed for the use of the Senate document room.

POLITICAL SITUATION IN THE SOUTH

Mr. BLEASE. Mr. President, I ask unanimous consent to have printed in the RECORD certain newspaper clippings with reference to the political situation in the South.

The VICE PRESIDENT. Without objection, it is so ordered.

The clippings are as follows:

[From the Crisis, May, 1929]

HOOVER AND THE SOUTH

Herbert Hoover has started something. We very much doubt if he understands the ramifications of his late declaration. His statement is that Republican Presidents for many years have tried to build up State Republican organizations in the Southern States; that this southern Republican Party must "commend itself to the citizens of those States"; that the basis of sound government is a strong 2-party representation; that there must be no sectionalism in politics; and that the reorganization must come "from the States themselves."

He then lists the States: North Carolina and Virginia have a Republican Party. Alabama, Arkansas, Louisiana, Texas, and Florida are strengthening the Republican Party, and Mr. Hoover commends the movement. He puts Mississippi, South Carolina, Georgia, and Florida on the black list and says nothing about Tennessee.

All this is singularly contradictory. By law, social and economic pressure, the formation of a real Republican Party has been resisted by the solid South for a generation.

The only movement which they have been willing to admit has been the forming of a white Republican Party, and it is this "Lily-white" movement which is triumphing in every one of the States which Mr. Hoover praises. Negroes have kept their hold in Mississippi, Georgia, and Tennessee. And two of these States Mr. Hoover roundly condemns.

Very good. Does President Hoover include black citizens among those whose judgment must "command" the reorganization? If the Perry Howard and Ben Davis type of political morality does not suit him, does he not know a single decent negro citizen in Georgia and Mississippi who can be trusted? And when reorganization must come from the States themselves, does his dominating local opinion include poor black laborers or only rich white bankers?

As a practical measure, suppose a Republican Party under white leadership and control grows up in the Southern States? On whom must it depend for votes? Manifestly on negroes.

Why should negroes vote for "Lily-whites" in preference to voting for Bourbon Democrats? They must be offered something; offices, better schools, better living conditions, abolition of "Jim Crow" cars. Something! If the Democrats and "Lily-whites" compete for the negro vote, then only patience and brains are needed to bring negro office holders and negro suffrage. If neither party offers anything, the new Republican Party can never exist, because it will be without votes. Even if its Federal patronage attracts any considerable body of voters from the white Democratic Party, the white Democrats can retaliate by inviting the negro voters, which is precisely what happened in Tennessee. In this case the Republicans, in self-defense, have got to submit at least to a partial leadership, and Robert R. Church, of Tennessee, maintains his position with the benediction of the President.

G. O. P. NEGROES IN PARTY REVOLT

Charles Michelson in New York World

WASHINGTON, April 21.—Negroes are engaging in a real insurrection against the Republican Party.

Every Member of Congress has received a broadside compiled from editorials of newspapers arraigning President Hoover for his declaration of policy in the South, which they interpret as a siding with the "Lily-whites" to eliminate negro citizens from sharing control of the party.

The collection of articles is issued by the Memphis Triangle. It reached the Congressmen in envelopes bearing the name of Robert R. Church, millionaire negro and political power in Tennessee.

The headlines of the articles are an index to their character:

"Herbert the Innocent," from the Jackson (Miss.) Daily News; "The People Elect Presidents to Run the Country Not to Build Political Parties," from the Atlanta Independent; "The Suggestion of an Infamous Deal" from the Memphis Commercial Appeal; "The Republican Party South," from the Chicago Tribune.

CITES DE PRIEST AND HOWARD

The advent of OSCAR DE PRIEST in Congress from Chicago, and the alleged effort of the administration to convict former Attorney General Perry Howard of trafficking in public jobs because he would not resign as Republican committeeman from Mississippi are cited in the extraordinary outburst of propaganda. The negroes appear to have learned something from the Anti-Saloon League, for the broadside resembles the Methodist Board of Temperance weekly clip sheet, which spreads the doctrine of prohibition.

The Triangle outburst has the preference under the caption, "President Hoover Stirs a Hornet Nest."

"From the President has come an open statement setting forth his plans in dealing with the Republican Party south of the Ohio. Many believe it to be a death knell to the negro in politics.

"Whatever may be Mr. Hoover's intention, the fact remains that his efforts will invite powerful opposition, both North and South, as the editorials reprinted on this page will indicate."

"WON'T STAND FOR IT

"The South will not stand for the establishment of a Republican Party within its doors headed by white men, and the regular Republicans North will not stand for the ousting of its faithful negro element, upon which it has always safely depended.

"In catering to lily-white carpetbaggers in the South the President stirs a hornet's nest, and the results may be both discouraging and painful."

The negro newspapers generally have taken up the cry.

An editorial in the Washington Tribune hails the advent of DE PRIEST, mentioning incidentally that "his first act of nominating young men for cadets to West Point and Annapolis is self-evident," and commenting that "Congressman DE PRIEST is a part of the Hoover administration and not a beneficiary of it."

This newspaper also mentions that "campaign pledges made to colored voters are not to be redeemed at this session of Congress."

WARNED ON PRECEDENT

The Atlanta Independent warns Mr. Hoover that every President who sought to Republicanize the South by eliminating the negro met with disaster.

"Let Mr. Hoover adopt this unpatriotic aspiration," an editorial runs, "and he will go out of office in 1933 as ingloriously as he went in gloriously in 1929." Referring to the States excepted by the President as requiring a shake-up of their Republican organizations, the Independent asks, "Did the breaking of the solid South atone for the sale of patronage in North Carolina, Texas, Virginia, and Florida?"

The obvious purpose of the propaganda is to scare the President away from his purpose to build up a real Republican Party in the South by ridding that section of its fear of negro domination through stirring up trouble for the party among the black voters of such northern States as Indiana, Illinois, and some others where they hold the balance of power.

This is the first time the race has attempted an organized movement of the sort, and some of the northern Republicans are doubtful of the wisdom of risking their surety in what Mr. Hoover would refer to as the marginal States for the possibility of consolidating the G. O. P. gains below the Ohio River.

HOWARD ON TRIAL TO-MORROW

Former Assistant Attorney General Howard goes on trial in Meridian, Miss., for the second time to-morrow. He was acquitted by a whole jury on the first indictment. The second case was postponed twice against Howard's protest. Part of the story is the allegation Howard was advised that if he would abandon his political place—the national committee having found no way by which he could be ousted from membership in that body—the second charge would not be pressed. The Government attorneys deny this absolutely.

[From the Daily Clarion-Ledger, Jackson, Miss.]

ALL PARTIES ACQUITTED IN PATRONAGE CASE

A "square deal for everybody" is the motto of the people of Mississippi, and that is a good one.

The grand jury in session in Meridian, composed of white men, released Perry Howard, colored, and J. G. Buchanan and G. F. McClelland, white, after considering the testimony for a very short time. In fact, it is understood that the jury was one accord when the trial was finished.

This is the second time that the defendants have been acquitted on the same charges, and this certainly should be the end of the matter.

The effect of this trial should be to convince the people of the North that the negro gets a square deal in Mississippi, and it should impress upon that race the fact that the white man's law is also the black man's law. That while it gives equal protection to members of both races and of all races, its heavy hand falls with equal force upon all those who violate its mandates.

Ed Patton, a life-long resident of Jackson, had his case thrown out by Judge Holmes, so flimsy was the evidence presented.

This brings to a close these "patronage" cases in Mississippi, cases that have received the attention of both Houses of Congress, both political parties, the Department of Justice in Washington, the courts of Mississippi, and which have given the newspapers of the country column upon column of news.

[From the Commercial Appeal, Memphis, Monday, April 28, 1929]

WHAT TO DO WITH HOWARD?

Some years ago charges of selling Federal offices were made against C. Bascom Slemp, a former Congressman, and at the time Secretary to the President. Although the complaints were almost as numerous as those against both cold and hot-weather complaints, nothing was ever done about it. The latest news is that Slemp is to be taken care of with a good position.

Then came the uprising against brokerage in Federal offices last summer in which Perry Howard, negro Republican boss of Mississippi and an Assistant Attorney General of the United States, was indicted along with several others. Last winter Howard was tried on one of set of charges and was acquitted. A hearing of another set has been concluded with the same result—an acquittal. The prosecutors, however, say there are more charges to be heard.

Howard, of course, has been dissociated temporarily from his Federal position. He is no longer, according to reports, the job dispenser for his State. But he does remain the leader of the dominant element of the Republican Party in Mississippi. If he had been convicted, his removal from job and influence could have been accomplished with ease and grace. But now that he has been acquitted, what shall be done with him? Ruthless handling without a reason therefore might have its evil repercussions politically, not only in Mississippi but also in many of the other States.

[From the Boston (Mass.) Chronicle]

FUMIGATING THE REPUBLICAN PARTY

The political storm clouds which began to gather shortly after the late Warren G. Harding was elected to the Presidency of the United States in 1920, have at last broken, and in the consequent deluge the negro finds himself literally a castaway, drifting in the treacherous sea of Republican lily-whiteism.

In the intervening years since Harding there were many well-meaning, sincere negroes in the Republican Party who could not discern the inevitable drift of their party southward toward the shoals of race prejudice. With remarkable courage and admirable loyalty to the political faith of their fathers, these men and women stanchly stood by the old ship as she rose and fell in the stormy seas of expediency pitilessly lashed on either side by the resistless winds of economic determinism. For them it must have been a moment pregnant with fear and trembling as they read the news emanating from Washington, D. C., last Tuesday.

On that day, President Hoover, the titular head of the Republican Party, in an interview with newspaper men made his final bid for the political affections of Dixie by practically reading out of his party the negro upon whose bed of sorrows and slavery that same party was born and nurtured over three score years ago.

"The Republican Party is the ship and all else the sea" once thundered the immortal Frederick Douglass. To-day that ship, with Captain Hoover at the helm, grimly rides the stormy seas of economic and social change. At her masthead she proudly flaunts a pennant upon which is inscribed in letters bold and bright, "For white only." On her water-soaked deck Quaker and Cracker embrace.

If great souls of yesteryear who helped to fashion the Republican Party to a weapon with which to cut the cordon knot of slavery could but come back to life they would face a spectacle too tragic here with pen to describe. Surely history offers few ironies to equal the present-day attitude of the Republican Party toward the negro.

Within recent years, if there was any one outstanding point which distinguished the Republican from the Democratic Party, it was the more cleverly veiled and slightly less hostile attitude which the G. O. P. showed toward the political prerogatives of the negro. Now, even that alleged difference has been leveled and both parties will henceforth vie with each other for political preference in the South, while the negro "remains in his place." But will he?

Truly, white America does not know the negro. The popular conception of the negro is an American of African descent, whose forebears 300 years ago were kidnapped on the shores of Africa and brought into the Western World as slaves, and who through the changing centuries has remained just a slave with a child's mind. If you ask the average American about the negro to-day you will hear a tale which takes you back to plantation days.

[From the Atlanta Independent, April 27]

JUDGE COBB, DOCTORS SCOTT AND HAWKINS, EDITORS VANN, ANDREWS, HARRIS, HOLSEY, AND BARNETT COME TO JUDGMENT

Oh, where are our tribunes in the hour of violent peril, when our constitutional rights are being invaded and we denied a voice in the house of our fathers? Oh, where is Doctor Hawkins, who announced himself the champion of his people and guaranteed Herbert Hoover on the square with all men?

Are Hawkins, Scott, Harris, Holsey, et al., going to sit idly by and give consent unto the political death silence? Will they not raise their voices in righteous appeal against the effort to hush their voices in party councils? Won't these men see the President, whom they helped to elect, and implore him not to exchange loyal Republicans for Lily-whites and klansmen—remind him of his preelection pledge to be fair to all men?

The President heard them before election—won't he hear them now? Did your interest in the race end with the election? If not, won't you come to judgment and speak for your people? Are you hopeful of a job and afraid your voice will lessen your chances? Do you place a job for yourself above the rights of your people? Why don't you demand that the Lily-white propaganda be repudiated by the administration? Why don't you demand that proscription, caste, and discrimination within the party cease or you will hold the party to a strict accountability at the polls in 1930–1932.

Let's insist with uncompromising zeal that race equality precedes party expediency and human rights paramount race, color, or faith.

If Cobb, Scott, Hawkins, Holsey et al., served the party for the race, let them come into court and ask a hearing for their constituents. But if they served for personal gain of any character the people expect no relief at their hands. If they had any influence in the Bar Building before the election, they ought to have some at the White House now, or know the reason why.

Where is Roscoe Conkling Simmons, the race's greatest orator? Ask that his people be heard? Will he not protest against the lynching of his people in the house of their friends?

The lamented Matthews protested and presented his fourteen points with all the determination of a Woodrow Wilson, to President Harding. Bob Church is fighting our battle almost single handed and alone, but where are Cobb, Scott, Holsey, and Hawkins? The Republicans these champions help put in power are stealing the manhood rights of the race far more sneakingly than the Democrats ever disfranchised them, while our tribunes, like Nero, fiddled while Rome burns down.

Will you let Horace Mann overshadow all of you? Whether you are entitled to it or not you are getting credit for a good job, and why not follow it up with a telling leadership? You could at least arrange a conference of race men in Washington to talk over the situation with the President before his administration defeats the party in 1932. You could tell the Lily-whites, Ku-Kluxes, and race haters that the party was built on principles and not color. You could say to the administration that unless this lily-white propoganda is called off our people will vote the Democratic ticket in 1930–1932 as a rebuke to the Republican Party for party perfidy, deception, and broken promises.

We have come to the parting of the ways, the negro will have justice and equal opportunities or he'll go to the Democrats as a matter of revenge. We'll do to the Republican Party what the Democrats did to Al Smith in 1928, beat hell out of them and wreck the party.

This is no day for felicitating the President about his wonderful achievement, but the hour of testing the pudding by chewing the bag, to shoot Luke, or put up the bag.

Hawkins, Scott, Simmons, Cobb, Holsey et al., come to judgment and take up the cudgel for your kith and kin or prove recreant to the duties and responsibilities imposed upon you in the last campaign. Quit saying, "Yes, sir," "colonel," or "general," and say, in tones that will be heard throughout America, "The price of our loyalty to the Republican Party is the full enjoyment of every right—political or economical—that any other citizen enjoys and is protected in.

[From the Memphis Triangle, Saturday, May 4, 1929]

HOOVER PASSES FOR MAN, BUT GOOD LORD, WHO SAID REPUBLICAN?

As soon as Herbert Hoover got to the White House he looked for the exit. If he misses the way we mean to help him find it. We strive to please.

In excepting Tennessee from the States in which Hoover the politician plans assault upon the record and principles of the Republican Party, Hoover the man opens the way for plain advice from this Commonwealth. We hasten our views lest he should think the compliment not well taken.

We speak as Republican to one who claimed that title late in life.

To Mr. Hoover's subterfuge as to a "2-party system" in the South the mightiest of all newspapers, the Chicago Tribune, Republican gospel, replies for all in these few kind words:

"The upbuilding of a strong 2-party system in the South should not come until the South enfranchises the negro or takes the constitutional penalty of reduction of representation in Congress for failure to do so. Furthermore there must be evidence that the negro is to be given justice in the courts. The Republican Party must not compromise with the nullificationists. It can not repudiate its origins."

The "origins" of the Republican Party had no place in the engineering course at Leland Stanford. Mr. Hoover and Walter Brown held in sweet and mutual agreement that the origin of the G. O. P. might be discovered and staked off if the size of the campaign fund offered no resistence to the venture. The fund proved to be sufficient.

Ohio boasts in Walter the lily-white sharpshooter whose habitual pinchbeck belies his profession. Ohio colored Republicans itch for Walter's return to Toledo. They are not as sharp as Walter but they can shoot.

Mr. Hoover asks Northern States to bear up and likewise bear him up while he skins alive negro Republicans in Dixie. More than a million negro Republicans in the North will soon advise their national committeemen, their Senators, and Congressmen that if they can look on in silence and agreement as Hoover does his skinning, maybe more than a million negro Republicans can look on as northern Democrats show the world what skinning really is. Even worms will turn.

Mr. Hoover says Tennessee is a Republican State. The title hardly holds water, but whenever Tennessee does come over on the Lord's side, as in 1920 and 1928, the old backslider is lifted up to grace by 100,000 negro Republicans.

Negro Republicans in Tennessee don't help J. WILL TAYLOR, apostle of the true doctrine, to do his stuff for the purpose of aiding Hoover to do his kind of stuff against their brethren in Georgia, South Carolina, and Mississippi.

If Brown, of Ohio, NEWTON, of Minnesota, and Burke, of Pittsburgh, think so, let them watch the election returns in 1930, and particularly in 1932. The White House itself may tune in if its occupant is not busy with the medicine ball.

Georgia, South Carolina, and Mississippi are read out of the Republican organization, not because they are not sound in the origins of the G. O. P., but only because as no honest man will dispute in a parliament of ordinary intelligence those States have lodged leadership of the party in gentlemen who, though deeply native, were born to a color displeasing to Hoover and his strange and daring crew, particularly to Brown, who is so afraid of being taken for an Indian or a Jap that each morning he announces from the post-office steps, "I am still white."

Tennessee rejects the flattery so sweetly thrown by Hoover. It sides with the faithful leaders of the disgraced and distressed States, lines up against this fraud with a White House label, and henceforward will move against Hoover and his works.

As in Tennessee so will it be in every State where the ballot box still executes the freeman's will—in Ohio, Indiana, Missouri, in California, Illinois, New Jersey, all through the East, and everywhere, even we think, in Kentucky, where the wool begins to drop from long-closed eyes.

Mr. Hoover, pursuing Perry W. Howard, whose escape thus far is due to his neighbors, dressed himself in woman's clothes and employed a woman's voice. But we know Miss Mabel wore no such shoe as made tracks in Mississippi. Feet take on size when in constant use as quick and hurried changes are made from path to path in the journey to the White House.

Mr. Hoover may be this man of courage, but his statement issued against Howard only 12 days before that persecuted man came up with his cross proved that Hoover knows how cowards play the part of indirection.

At Kansas City Miss Mabel, sitting in a chair usually occupied by a chairman, put Howard on the rolls of the Republican National Convention. She seated his entire delegation. Hoover took his vote and the votes of his comrades.

At Jackson and Meridian Hoover and Miss Mabel directed a Government prosecutor to take Howard's life, and requested a Federal judge to bury him in a felon's grave. Mississippi Democrats had to show Hoover how real white men act white.

By repudiating Howard, regularly elected leader of the Republicans of Mississippi, Hoover sought to convict him even before he reached the courthouse. Miss Mabel and Walter knew the influence of a presidential "paper."

If Hoover is a Republican, we say if he is, it is the convenience of honors that attracts his vulgar allegiance and not either knowledge of right or love of principle.

When the Republican Party becomes a Hooverwhite party in the South, as Hoover seems to wish, the Democratic Party will become less white in the North, as Brown and Newton do not wish.

Hoover demands the Republican organization to read the southern negro out of his party because the Democratic Party has legislated him out of his government. Negroes in the free States, many of them having left their homes seeking the liberty of expression, will proceed to answer Mr. Hoover. If they can, they will drive him out of the White House, the habitation of just and honorable men, and his brutal crowd out of control of their party.

We war not against the Republican Party, but against hypocrisy, fraud, against the unprincipled designs of the double-barreled light-fingered pirates now in control of our party. We war against all who

seek the repudiation and desertion of the principles by which our party has thus far advanced and upon which it has continued in almost unbroken sway since 1860.

Mr. Hoover likes to be called a great engineer. He may now try tunneling Tennessee, and in retaliation drive us from the ballot box. But he knows Tennessee about as well as he knows the origin of the Republican Party. However, he might direct Miss Mabel to put a Mississippi Tyler at the door of a Tennessee grand jury and instruct it to find a true bill disfranchising 600,000 of us.

Miss Mabel was a great lawyer at Kansas City, or had it said of her, until Judge HASTINGS, now Senator from Delaware, took the floor and disclosed her as only passable to look at but a missbapen old lady as lawknower or lawgiver.

The war is on, and we war for the self-respect of an outraged loyalty. Recognize our banner by these words: The Republican Party, as with our Christian faith, the same yesterday, to-day, and forever, everywhere, in South Carolina, Georgia, and Mississippi, as in Tennessee, Ohio, and Illinois.

Hoover is a one-lung Republican and a one-term resident of the White House. As a President, he passes for a man, but, good Lord, who said Republican!

INVESTIGATION OF SINKING OF STEAMSHIP "VESTRIS"

Mr. FLETCHER. Mr. President, I ask unanimous consent to have printed in the RECORD an article from the New York Times of May 4, 1929, entitled "Told to Falsify Log, *Vestris* Man Admits," and so forth.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 4, 1929]

TOLD TO FALSIFY LOG, "VESTRIS" MAN ADMITS—CHIEF OFFICER CHARGES CAPTAIN URGED "CAREFUL" ENTRY ON OVERDRAFT OF LINER—CONCEALED EVIDENCE HERE—"MY GOD! I AM NOT TO BLAME FOR THIS," CAREY CRIED BEFORE DEATH, ANOTHER TELLS

(Special cable to the New York Times)

LONDON, May 3.—Frank William Johnson, senior surviving officer of the *Vestris*, admitted to-day at the board of trade inquiry into the disaster which cost 110 lives last November that he could no longer be "loyal" to his company, Lamport & Holt (Ltd.), owners of the *Vestris*. Johnson said he knew that the fact that the *Vestris* had sailed below her marks was going to cause a lot of trouble and first mentioned the matter to Third Officer Welland when rescued by the steamer *American Shipper* and to Captain Heasley at the Hotel Holly in New York.

"We were talking continually on the *American Shipper* about the *Vestris's* draft," said Mr. Johnson. "We did not want the American people to get hold of this overloading business and were trying to conceal it. That was our intention from the beginning. We wanted to get home. We did not want to be in those courts all the time in America. Welland had a conversation with the master of the *American Shipper*, who said, 'I don't want to hear anything about the disaster; but be loyal to your company.' Well, we tried to be loyal; that was all."

UNABLE TO MAINTAIN LOYALTY

Butler Aspinwall, chairman of the court, asked, "You are still anxious to be loyal to your company?"

Mr. Johnson replied:

"Well, I can not."

Mr. Johnson added that he thought overloading was one of the causes of the disaster. He could not recall any other definite occasion when Lamport & Holt ships had left below their marks. There was no pumping out of water from the *Vestris* as the ship proceeded down the Hudson River from Hoboken, he said.

G. P. Langton, counsel for the owners, questioned Mr. Johnson about what he described as "the puzzle of this case."

"I gather," Mr. Langton said, "that both you and Captain Carey, the master of the *Vestris*, were puzzled as to why the vessel was heeling over even though Captain Carey had ordered the tanks to be pumped out and the engineer was saying he was keeping the water down?"

Mr. Johnson's reply was:

"Yes; the vessel was rolling to its end."

Mr. Langton then put several questions regarding the allegation that Captain Heasley, assistant superintendent of the Lamport & Holt Co. in New York, had destroyed documents relating to the *Vestris*, and suggested this was "mere gossip."

Mr. Johnson denied having "constructed the charge to blacken Heasley's character," but admitted he did not know of anything on which the charge could be based apart from what he heard in conversations.

Mr. Langton then asked Mr. Johnson whether he had made any protest when Chief Officer Anderson, of the *Vestris*, had told him to be careful what he put in the log book about the ship's draft. Mr. Johnson said he did not know.

"Did you know," asked Mr. Langton, "that what he meant for you to do was a criminal offense?"

Mr. Johnson answered, "No."

"Do you suggest that you were ready to commit a criminal offense without a protest?" Mr. Langton continued.

Mr. Johnson replied, "Yes," and added that Captain Carey, the drowned master, had told him to be careful what he put in the log, and that he had replied that Chief Anderson had spoken to him about it.

FIRM IN CHARGE AGAINST CAREY

"You are seriously suggesting that Captain Carey meant you to put a false draft in the official log?" Mr. Langton asked. Mr. Johnson answered, "Yes," and later added, "I don't like saying these things," but adhered to his view that he had not mistaken the meaning of Captain Carey's words.

Mr. Aspinwall opposed the application of Mr. Webb, of the New York stevedore company of Hogan & Sons for permission to return to the United States, saying Mr. Webb seemed to take the responsibility for the disposition of the cargo with certain limitations.

"Some of my colleagues," said Mr. Aspinwall, "take a serious view regarding the position in which heavy weights were placed in the *Vestris*. The matter has not been sifted as it ought to be in regard to the positions of the heavy weights."

It was then arranged for Mr. Webb to give his evidence on Monday.

Leslie Watson, second officer of the *Vestris*, was asked by E. A. Digby, counsel for the relatives of victims of the disaster, whether anything had passed between Captain Carey and him in the very last critical moments.

"I don't know whether Captain Carey was speaking to himself or to me," said Mr. Watson. "All he said was, 'My God, I am not to blame for this.' That was when the ship was nearly down."

Mr. Watson later said, "Captain Heasley asked me about the *Vestris's* draft and I gave him the figures. Mr. Heasley said, 'No, no, that is not it; this is the draft we are using,' and gave me different figures."

The inquiry was adjourned to Monday.

JOHNSON STORY DIFFERENT HERE

Much of the important testimony given in London by Chief Officer Johnson is not included in the records taken during the American investigation into the sinking of the *Vestris*. It took Department of Justice agents two days to find Mr. Johnson before they could serve a subpœna to appear as a witness here. When he did take the stand to be questioned by Capt. E. P. Jessop, he told a story that was not flattering to himself or the other officers, including his dead captain.

When he was questioned by United States Attorney Tuttle here as to his theory of the sinking of the *Vestris*, Mr. Johnson said nothing about overloading. He said he believed it was due to "exceptionally bad weather" which was in contradiction to Captain Carey's radio message that the sea was "moderately rough."

Mr. Johnson gave no intimation at the investigation here that he had received orders to enter false records as to the liner's draft. He was a difficult witness and was forced to admit his ignorance of certain of his duties. His excuse for this was that he had been made chief officer on the *Vestris* the day before the liner left New York on its last voyage.

Although he testified that he had charge of all lifeboats and the crew, he admitted here that the boats had been lowered haphazardly and the passengers put into them without a semblance of good order; that the other ship's officers refused to take his instructions to take command of the boats, and that he sent away lifeboat 1, the only one with an engine, without putting an engineer aboard.

Captain Jessop, obviously angered by these admissions, delved deeper into this matter until Mr. Johnson asked:

"What could I do in a case like this?"

"You ask me that question?" retorted the retired naval officer.

PROHIBITION

Mr. TYDINGS. Mr. President, I ask unanimous consent to have inserted in the RECORD a newspaper editorial by William Randolph Hearst, commenting on President Hoover's recent speech on law and order before the members of the Associated Press.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

WE NEED LAWS WE CAN RESPECT, W. R. HEARST REPLIES TO PRESIDENT

[Reprinted from Kansas City Star of April 25]

President Hoover's address on law enforcement at the Associated Press luncheon in New York was a shot in the air—a blank cartridge discharged against a blank wall.

Everybody knows that the laws ought to be enforced.

Everybody knows that the President ought to enforce the laws as far as comes within the obligation of his office.

Everybody knows that the laws ought to be respected, just as everybody knows that women ought to be respected, and that women are respected by every decent man.

But occasionally there is a woman who is not respected, who is not respectable, who does not respect herself, and whom no one in his heart can respect, no matter what outward observance of respect he may render.

And so, occasionally, there are laws which can not be respected no matter how they are observed by good citizens.

And there are lawmakers who can not be respected—such, for instance, as gentlemen who impose dry laws upon the land and carry whisky flasks in their hip pockets.

Respect for law is a good thing when the laws and lawmakers are worthy of respect.

But if the American people had had respect for all laws, good or bad, there would have been no Boston Tea Party to protest against the invasion of the rights and liberties of our people; no Declaration of Independence to declare liberty and equality as the inalienable rights of man; no United States of America to establish liberty and equality as the foundation stones of republican government; and in that sad case, no President Hoover, but only a certain Herbert Hoover, eminent engineer, and a loyal and law-respecting subject of His Majesty King George V.

Of course, there should be respect for law in the abstract, but first there should be laws which deserve respect.

It is better to respect the fundamental American principles of liberty, equality, and justice than it is to respect laws which infringe upon these inalienable rights of man.

Of course, there should be respect for the lawmakers; but how can lawmakers be respected who first take a drink and then pass a law imposing five years' penal servitude and $10,000 fine upon any citizen who takes a drink, and then go back and take another drink out of a bottle of whisky which they have smuggled through the customs under their privilege as Congressmen?

Of course, law-enforcement machinery should be respected; but how can it be respected when the head of the machine tells the law-enforcement officers that the recent liquor law must not be enforced against all the community, but only against part of the community—must not be enforced in all cases, but only in some cases—and that the discretion for its enforcement lies in the hands of the law-enforcing officers?

How wide open this decision leaves the door to blackmail and bribery and corruption, when corruption is already rotting the social and political fabric of the Nation!

How this decision shatters the foundation stones of the Republic!

The corner stone of liberty has already been reduced to dust.

And now another corner stone—equality before the law—is crumbling before our eyes.

President Hoover says in the course of his speech at the Associated Press luncheon:

"We have reason to pride ourselves on our institutions and the high moral instincts of the great majority of our people."

Then, later on, the President complains of—

"The possibility that respect for law as law is fading from the sensibilities of our people."

There is nothing the matter with the institutions we have—or, rather, used to have. They embody the basic principles of liberty, equality, and equity, upon which rest the peace and happiness of mankind.

We "pride ourselves upon our institutions," as the President truly says.

There is nothing the matter with them if we can only preserve them.

There is nothing the matter with our people. They are a great people and a good people, with "high moral instincts," as President Hoover describes them.

If, therefore, there is, as President Hoover fears, "the possibility that respect for law as law is fading from the sensibilities of our people," then there must inevitably be something the matter with the law.

If there is no sufficient respect for law when our institutions are sound and our people are good, then the inescapable conclusion is that our laws must be bad.

If there is "the possibility that respect for law as law is fading from the sensibilities" of our highly moral people, then it must be that the laws, or a considerable portion of them, are unworthy of respect by a highly moral people.

That is the unavoidable conclusion, and that conclusion makes the character of our laws the crucial question for the American people to consider.

President Hoover's speech is a shot in the air—a blank cartridge fired at a blank target—because it avoids the crucial question of the cause of law infraction and concerns itself only with the superficials of law enforcement and of penalties for law infraction.

President Hoover forgets the old adage that "an ounce of prevention is worth a pound of cure," and that if an ounce of prevention is worth a pound of cure an ounce of prevention is worth 10 pounds of penalties which do not cure.

President Hoover says:

"We have two immediate problems before us in government, to investigate our existing agencies of enforcement and to reorganize our system of enforcement."

He overlooks entirely the crucial question of re-forming our laws and returning in our law construction and law enforcement to the fundamental American principles of liberty, equality, and essential equity.

Surely there is something the matter with the law when the lawmakers themselves break it as soon as it is made.

Surely there is something the matter with the law when the law-enforcement officers may decide in their discretion to whom it shall apply.

Surely there is something the matter with the law when a Cossack crew of enforcement officers violate all popular rights and liberties and break into a man's house on a warrant obtained on perjured testimony and beat him into insensibility and shoot his wife to death as she sits at a telephone trying to get help for her husband.

President Hoover complains of the small percentage of convictions of criminals under existing laws and asks for severer penalties, apparently unconscious of the well-known fact that severe penalties, out of harmony with the sentiment of a community, always result in fewer convictions and greater encouragement of crime; because no criminal is deterred by a law if he is not afraid of conviction under the law.

President Hoover recognizes "the vast sums that are poured into the hands of the criminal classes by the patronage of illicit liquor by otherwise responsible citizens."

But he does not seem to realize that these vast sums have financed the underworld and are chiefly to blame for the wide extension of crime and the effective organization of the criminal classes in all lines of criminal endeavor.

How great that extension of crime and that organization of criminal classes are can best be told in the President's own words, when he says:

"Twenty times as many people in proportion to population are lawlessly killed in the United States as in Great Britain."

"At least fifty times as many robberies in proportion to population are committed in the United States as in Great Britain, and three times as many burglaries."

"Life and property are relatively more unsafe than in any other civilized country in the world."

In spite of all this, the President apologizes for the contaminating conditions under prohibition and declares that "it is only a section of the invasion of lawlessness."

Can it be that the Jones law is in accord with the President's idea of proper legislative procedure—the Jones law, which is widely regarded as the most menacing piece of repressive legislation that has stained the statute books of this Republic since the alien and sedition laws under John Adams, which permanently put the Federalist Party out of power and installed the Democratic-Republican Party under Jefferson to preserve the right and liberties of American citizens?

The Jones Act calls for more vigorous and more vindictive enforcement of the sumptuary laws.

The Jones Act increases the penalties until the citizen who commits what can only be regarded as a misdemeanor is punished for a high crime.

The Jones Act adds persecution to prohibition, and in our principles of government substitutes fanaticism for freedom.

The Jones Act destroys the American ideals of liberty which have been our boast and our boon, and imposes upon our people the European idea of governmental tyranny which our fathers came to this country to avert and avoid.

Withal, the Jones Act will defeat its own narrow purposes, and, instead of creating a condition of rigid restriction, will cause—

First. Fewer convictions because of over-severe penalties.

Second. More killings for fear of possible infliction of the severe penalties.

Third. More corruption to avoid arrests and possible convictions.

Fourth. Higher prices for liquor on account of greater risks, and consequently greater profit in crime.

Fifth. More violence and more violation of popular rights.

Sixth. More conflict between the extremes of bonehead drys and bullhead wets, with more distress and discomfort to the moderate, temperate, peace-loving, liberty-loving mass of our citizenship.

Seventh. More cant and hypocrisy in public life, more insincerity among public men, and more disposition on the part of the public to consider the lawmakers of the land a lot of fools and frauds and fanatics—all of which could be avoided if the party in power would remember that it was elected on the Republican ticket, and not on the prohibition ticket, and that it could best serve its party and its country by restoring the principles of liberty and equality and justice for which our fathers fought.

For be it remembered that our fathers shed their blood, not for laws, but for principles.

WILLIAM RANDOLPH HEARST.

AMENDMENT OF STANDING RULE XXV

Mr. BINGHAM. Mr. President, a few days ago I introduced a resolution proposing to change the name of the Committee on Territories and Insular Possessions to the Committee on Territorial and Insular Affairs. The resolution now lies upon the

table where I have left it in order to consult with the leaders on both sides of the aisle. So far as I can find there is no objection to it. It is believed that it would be more agreeable to the people living in the islands under the American flag if the committee were referred to as the Committee on Territorial and Insular Affairs, as is the House committee, rather than as the Committee on Territories and Insular Possessions. I ask that the resolution may be taken from the table and passed.

The VICE PRESIDENT. The clerk will read the resolution for the information of the Senate.

The Chief Clerk read the resolution (S. Res. 55) submitted by Mr. BINGHAM on the 6th instant, as follows:

Resolved, That the last paragraph of section 1 of Rule XXV of the Standing Rules of the Senate be, and hereby is, amended to read as follows: "Committee on Territorial and Insular Affairs, to consist of 14 Senators."

Mr. ROBINSON of Arkansas. Mr. President, may I ask the Senator from Connecticut the purpose of the resolution?

Mr. BINGHAM. The purpose of the resolution is merely to change the name of the committee from the Committee on Territories and Insular Possessions to the Committee on Territorial and Insular Affairs. That is the only change.

Mr. ROBINSON of Arkansas. I have no objection to the resolution.

Mr. KING. Mr. President, may I ask the Senator from Connecticut a question? If adopted, will the resolution affect the size of the committee?

Mr. BINGHAM. It will make no change in the size of the committee.

Mr. ROBINSON of Arkansas. It merely proposes to change the name of the committee.

Mr. KING. I am inclined to think that it is a wise suggestion, and, if the Senator will allow me further, I think it would be well, although, of course, it may not be done under the pending resolution, to declare that we do not intend to hold territorial possessions for exploitation, but will adhere to the view that all persons living under the flag shall be entitled to the rights that belong to all citizens of the United States residing in territory now within the continental United States.

Mr. ROBINSON of Indiana. I am not familiar with the resolution, and I should like to have it go over in order that I may examine it. I shall have to object.

The VICE PRESIDENT. Under objection, the resolution will go over.

ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. McKELLAR. Mr. President, I desire to call the attention of the Senate to an anonymous circular which I will read. It is as follows:

AMERICAN TAXPAYERS LEAGUE,
Washington, D. C., May 1, 1929.

SECRETARY MELLON'S QUALIFICATIONS QUESTIONED

An effort to disqualify Secretary Mellon from holding position as a Cabinet officer is under way in the Senate, led by Senator NORRIS, of Nebraska. The Secretary is charged with owning stock in corporations. He plead guilty to the charge, but stated that he did not own a majority of the stock in any corporation and was not an officer or director of any corporation.

The subject is now before the Judiciary Committee of the Senate, and the committee is said to be evenly divided on the resolution to disqualify the Secretary. The members of the Judiciary Committee are:

Republicans: George W. Norris, Nebraska, chairman; William E. Borah, Idaho; Charles S. Deneen, Illinois; Frederick H. Gillett, Massachusetts; Arthur R. Robinson, Indiana; John J. Blaine, Wisconsin; Frederick Steiwer, Oregon; Charles W. Waterman, Colorado; Daniel O. Hastings, Delaware; and Theodore E. Burton, Ohio.

Democrats: Lee S. Overman, North Carolina; Henry F. Ashurst, Arizona; Thomas J. Walsh, Montana; Thaddeus H. Caraway, Arkansas; William H. King, Utah; Hubert D. Stephens, Mississippi; and C. C. Dill, Washington.

We are inclosing copy of cartoon appearing in the Washington Star which very clearly and cleverly presents the case.

The question will reach the Senate either through a majority or a minority report. We would suggest that you write your Senators, giving them your views on the subject, as it is an issue which is rather a fundamental one in managerial policies of our Government.

This circular is not signed, but there is attached to it the cartoon appearing in the Sunday Star of April 28, 1929. I have received, I think, about eight letters, apparently in response to this anonymous propaganda that is being sent out by what is stated at the top of the circular to be the "American Taxpayers' League." I do not know what that league is; I do not know who compose it or what connection they have with this matter at all, but I think the Senate ought to know when its Members get letters in response to the matter that most probably they are the result of this anonymous propaganda. I ask that the circular may be published in the RECORD.

The VICE PRESIDENT. Having been read, the circular will appear in the RECORD.

Mr. SMOOT. Mr. President, I desire to ask the Senator from Tennessee a question.

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Utah?

Mr. COPELAND. I yield to the Senator from Utah.

Mr. SMOOT. Did I understand the Senator from Tennessee to request that the cartoon also be published in the RECORD?

Mr. McKELLAR. As I understand, the cartoon can not be printed in the RECORD without a special order, and I am not asking that that be done.

Mr. SMOOT. It was to that matter that I desired to direct attention.

Mr. NORRIS. Mr. President, with the permission of the Senator from New York [Mr. COPELAND], I should like to say that I also have received through the mails a circular similar to that read by the Senator from Tennessee. I thought it was hardly worthy of attention, but since it has been brought up I should like to say that the so-called American Taxpayers' League have not disclosed who they are, what their object is, or given any other information. There is nothing appearing in the propaganda letter which they have sent out to show the name of anyone who is connected with the so-called league.

What I want to call to the attention of the Senate, and I hope to the attention of the country, is that the question submitted to the Judiciary Committee was a question of law and intermingled with it was a question of fact. This circular is an attempt by propaganda to induce people to write to members of the Judiciary Committee in an attempt to influence them to cast their official votes regardless of what they may think to be the law and the facts as disclosed before them. That is as improper as though such a circular were sent to members of the Supreme Court who had before them a question to determine which had been argued and submitted to the court.

If it had happened in the case of the court instead of the committee, every letter sent out would be a contempt of court and the writers ought to be punished accordingly. It is an attempt to induce Members of the Senate who are members of the Judiciary Committee to violate their oath of office and to pass upon a question of law which has been submitted to them by the Senate, as though it were a question involving the erection of a public building or the establishment of a new judicial district or something that was purely a matter of legislation. I think, however, that Members of the Senate reading the circular which has been sent out to induce people to write to them on this question will not be misled, because any member of the Judiciary Committee called upon to decide a question which has been submitted to that committee by the Senate who would follow any such suggestion would be not only unworthy to be a member of the Judiciary Committee but also to be a Member of the Senate itself.

Mr. McKELLAR. Mr. President, in view of the fact that the letter which has been sent out will be published in the RECORD, I ask unanimous consent to have printed at this point in the RECORD the report of the majority of the committee and the various minority views as they have been submitted to the Senate.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

The report (S. Rept. No. 7) and the several minority views are as follows:

[S. Rept. No. 7, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY—REPORT OF THE COMMITTEE ON THE JUDICIARY, PURSUANT TO SENATE RESOLUTION 2, RELATIVE TO THE TENURE OF OFFICE OF HEADS OF DEPARTMENTS AND THE RIGHT OF ANDREW W. MELLON TO HOLD THE OFFICE OF SECRETARY OF THE TREASURY, TOGETHER WITH THE MINORITY VIEWS OF MR. NORRIS, MR. CARAWAY, MR. WALSH OF MONTANA, AND MR. BLAINE; THE ADDITIONAL VIEWS OF MR. BLAINE AND MR. WALSH OF MONTANA, RESPECTIVELY; THE VIEWS OF MR. BORAH, MR. KING, AND MR. DILL; AND THE INDIVIDUAL VIEWS OF MR. ASHURST

[S. Rept. No. 7, pt. 1, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. STEIWER, from the Committee on the Judiciary, submitted the following report (pursuant to S. Res. 2):

On March 5, 1929, the Senate of the United States passed the following resolution:

"*Resolved*, That the Committee on the Judiciary be, and it is hereby, directed to inquire into and report to the Senate—

"1. Whether the head of any department of the Government may legally hold office as such after the expiration of the term of the President by whom he was appointed.

"2. Whether, in view of the provisions of the laws of the United States, Andrew W. Mellon may legally hold the office of Secretary of the Treasury, reference being made to section 243 of title 5 of the Code of Laws of the United States of America, as follows:

"'SEC. 243. Restrictions upon Secretary of the Treasury: No person appointed to the office of Secretary of the Treasury, or Treasurer, or Register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information.'

"And to section 63 of title 26 of the Code of Laws of the United States, as follows:

"'SEC. 63. Interest in certain manufactures or production of liquors by revenue officers prohibited: Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than $500 nor more than $5,000. The provisions of this section shall apply to internal-revenue agents as fully as to internal-revenue officers.'"

Pursuant to said resolution the Committee on the Judiciary has held numerous meetings and has gathered certain information and has made careful examination of the provisions of section 243 of title 5 and section 63 of title 26 of the Code of Laws of the United States.

The Committee on the Judiciary, to whom the said resolution was referred, having fully considered the same, now report thereon as follows:

Answering question (1) of the resolution, it is the opinion of the committee that the head of any department of the Government may legally hold office as such after expiration of the term of the President by whom he was appointed. In the consideration of this matter the committee assumed that the words "head of any department" are intended to embrace the heads of the executive departments, which make up the President's Cabinet. The committee further assumed that the question was to be regarded as limited to those offices not specially governed by statute, and the foregoing opinion, therefore, has no application to the tenure of office of the Postmaster General.

Answering question (2) of the resolution, the committee is of the opinion that Andrew W. Mellon may legally hold the office of Secretary of the Treasury under the requirements of section 243, title 5, and section 63 of title 26 of the Code of Laws. It is a well-known fact that Mr. Mellon was appointed Secretary of the Treasury by President Harding and was confirmed by the Senate in 1921, and that he has held office for more than eight years. The question asked the committee is whether he may legally hold the office. This question we have answered in the affirmative.

The question presented requires an interpretation of section 243, the significant language of which is as follows:

"No person appointed to the office of Secretary of the Treasury * * * shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce."

It is contended by certain members of the committee, who are not parties to this report, that mere ownership of stock in a corporation which is engaged in trade or commerce is a violation of the law and that such ownership disqualifies the Secretary of the Treasury.

It is clear to the signers of this report that the statute condemns only an interest or concern, direct or indirect, "in carrying on the business of trade or commerce." With respect to a corporation this means that the Secretary of the Treasury shall not hold office as a director or as an officer, and that he shall not by any means, either direct or indirect, participate in any activity in carrying on the business of a corporation if the corporation is engaged in trade or commerce. This, in our opinion, is a reasonable, proper, and correct interpretation of the statute.

This interpretation is supported by the fact that numerous Secretaries of the Treasury have owned stock in corporations engaged in trade. It is inconceivable that all these Secretaries willfully violated the law, and equally inconceivable that the Presidents under whom they served would have appointed men of known ineligibility, or that the Senate would have confirmed ineligible appointees. Obviously it has been thought in many official quarters that the section referred to did not apply to mere ownership of corporate stock.

Contemporaneous and subsequent departmental and executive construction is entitled to great weight. Moreover, as the statute is a penal statute, its meaning may not be extended by construction, but in case of doubt should be given a restricted construction. We feel that the construction which we have placed on the act is not only thoroughly consistent with its language but is compelled by the ordinary rules of statutory construction as well as long-established practice.

Some of those agreeing to this report question the jurisdiction of the committee to proceed in this inquiry beyond an interpretation of the statute in question, on the ground that it would be a judicial inquiry and is not in aid of any legislative function of the Senate, and that there is no legislation pending or proposed which would bring the investigation within the lawful power of the Senate or of the Committee on the Judiciary. They believe that it is improper for the Senate to prosecute this investigation because by the Constitution the initiative has been vested in another body.

The committee did not subpœna witnesses. It considered certain information and data which was presented to the committee. With full knowledge that the facts may not all have been ascertained, we have answered question (2) literally in the language of Senate Resolution 2, viz, that Mr. Mellon "may legally hold the office of Secretary of the Treasury." In addition, it is our opinion, upon the facts which the committee has considered, that Mr. Mellon does legally hold the office, and it is also our opinion that no contrary conclusion can properly be reached except through duly instituted criminal proceedings or impeachment proceedings originating in the House of Representatives.

Relative to section 63 of title 26 of the Code of Laws, the committee finds nothing in Mr. Mellon's business relations that would make him ineligible under this section. The facts obtained by the committee disclose the only concern in which Mr. Mellon was ever interested, which was engaged in the production, rectification, or redistillation of distilled spirits, ceased such activities long before the adoption of the eighteenth amendment and long before Mr. Mellon assumed office as Secretary of the Treasury.

This committee report is concurred in by a majority consisting of the following-named members: Overman, Deneen, Gillett, Robinson (Indiana), Stephens, Steiwer, Waterman, Hastings, and Burton.

[S. Rept. No. 7, pt. 2, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. NORRIS, from the Committee on the Judiciary, submitted the following minority views (pursuant to S. Res. 2):

The undersigned members of the Committee on the Judiciary, being unable to agree with the conclusions reached by the majority of said committee on Senate Resolution 2, relative to the tenure of office of heads of departments and the right of Andrew W. Mellon to hold the office of Secretary of the Treasury, beg leave to submit herewith our views upon the questions asked by the Senate in said Senate Resolution 2.

The resolution reads as follows:

"*Resolved*, That the Committee on the Judiciary be, and it is hereby, directed to inquire into and report to the Senate—

"1. Whether the head of any department of the Government may legally hold office as such after the expiration of the term of the President by whom he was appointed.

"2. Whether in view of the provisions of the laws of the United States Andrew W. Mellon may legally hold the office of Secretary of the Treasury, reference being made to section 243 of title 5 of the Code of Laws of the United States of America, as follows:

"'SEC. 243. Restrictions upon Secretary of Treasury: No person appointed to the office of Secretary of the Treasury, or Treasurer, or Register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half of the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information.'"

"And to section 63 of title 26 of the Code of Laws of the United States, as follows:

"'SEC. 63. Interest in certain manufactures or production of liquors by revenue officers prohibited: Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of

tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than $500 nor more than $5,000. The provisions of this section shall apply to internal-revenue agents as fully as to internal-revenue officers.'"

The first question submitted to the Judiciary Committee by the Senate is: Can the head of any department of the Government legally hold office as such after the expiration of the term of the President by whom he was appointed?

The appointment of the heads of departments by the President is provided for by section 2, Article II, of the Constitution of the United States; but the Constitution nowhere fixes the length of the term of such officials, and it therefore follows that they can hold their respective positions indefinitely unless removed by the President.

Congress passed no law relating to the length of the tenure of office of any of the heads of departments until it passed the act of March 2, 1867 (14 Stat. 430). This act, known as the tenure of office act, provided that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General and the Attorney General "shall hold their offices, respectively, for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

Two years later Congress amended this act by the act of April 5, 1869 (16 Stat. 6). This act repealed the section of the act of March 2, 1867, relating to the tenure of office of the heads of departments and enacted in lieu thereof the following:

"That every person holding any civil office to which he has been or hereafter may be appointed by and with the advice and consent of the Senate, and who shall have become duly qualified to act therein, shall be entitled to hold such office during the term for which he shall have been appointed, unless sooner removed by and with the advice and consent of the Senate, or by the appointment, with the like advice and consent, of a successor in his place, except as herein otherwise provided."

The balance of the act from which the above quotation is made in no way modifies or changes the portion above quoted.

The section last above quoted afterwards became section 1767 of the Revised Statutes of 1878. This section of the Revised Statutes (sec. 1767) was afterwards, by the act of March 3, 1887 (24 Stat. 500), expressly repealed, leaving, with one exception (hereinafter noted), nothing in the statutes relating to the tenure of office of heads of departments.

This exception was that relating to the tenure of office of the Postmaster General. The original act establishing the Post Office Department and providing for a Postmaster General to be the head thereof was the act of May 8, 1794 (1 Stat. 357). This act contained no provision whatever as to the tenure of office of the Postmaster General, but, by the act of June 8, 1872 (17 Stat. 283), revising the laws relating to the Post Office Department, the tenure of office of the Postmaster General was fixed "for and during the term of the President by whom he is appointed, and for one month thereafter, unless sooner removed." This provision afterwards became section 388 of the Revised Statutes and is now section 361, title 5, of the United States Code.

As the law now stands, the Postmaster General is the only head of a department whose tenure of office is definitely fixed by law, although, as will appear hereafter, the laws relating to the tenure of office of the Secretary of Commerce and likewise of the Secretary of Labor are different from the statutes relating to the office of the heads of any other executive departments.

It may be interesting and perhaps instructive to give a brief legislative history of the establishment of the various executive departments of the Government and the provisions made in such statutes for the heads of these departments.

DEPARTMENT OF STATE

The Department of State was established by the act of July 27, 1789 (1 Stat. 28), and was denominated the "Department of Foreign Affairs," with a head to be known as the "Secretary for the Department of Foreign Affairs." Later, by the act of September 15, 1789 (1 Stat. 68), the name of the department was changed to "Department of State" and the name of the head of the department was designated as "Secretary of State." There was no provision in either of these acts as to the tenure of office of the Secretary of State. These provisions of law later became section 199 of the Revised Statutes and now constitute section 151 of title 5 of the United States Code.

DEPARTMENT OF WAR

The War Department was created by the act of August 7, 1789 (1 Stat. 49), which also provided that the head of the department should be known as the "Secretary for the Department of War." This statute afterwards became section 214 of the Revised Statutes and is now section 181 of title 5 of the United States Code. None of these statutes contained any provisions relating to the length of the term of office of the head of this department.

DEPARTMENT OF THE TREASURY

The Department of the Treasury was established by the act of September 2, 1789 (1 Stat. 65). It was provided in such act that the head of the department should be known as "Secretary of the Treasury," but nothing was said in the act as to the tenure of office of the Secretary. The act, without change in this respect, afterwards became section 233 of the Revised Statutes and is now section 241 of title 5 of the United States Code.

DEPARTMENT OF JUSTICE

The original act creating the Department of Justice was passed June 22, 1870 (16 Stat. 162). The first act providing for the office of Attorney General was the act of September 24, 1789 (1 Stat. 93), but the Attorney General was not the head of a department until the creation of the Department of Justice in 1870, nearly 100 years later. Neither of these acts, however, contained any provision fixing a definite term of office for the Attorney General. The act of 1870, creating the department, became section 346 of the Revised Statutes and is now section 291 of title 5 of the United States Code.

POST OFFICE DEPARTMENT

The Post Office Department was established and provision made for the appointment of a Postmaster General by the act of May 8, 1794 (1 Stat. 354), but this act contained no provision as to the length of the term of office of the Postmaster General. In 1872 an act was passed to revise the statutes relating to the Post Office Department (17 Stat. 283) in which it was provided that the Postmaster General "shall be appointed by the President, by and with the advice and consent of the Senate, and who may be removed in the same manner; and the term of office of the Postmaster General shall be for and during the term of the President by whom he is appointed, and for one month thereafter, unless sooner removed."

This statute is the existing law. It became section 388 of the Revised Statutes and is now section 361 of title 5 of the United States Code.

It will be observed that the term of office of the head of this department is definitely fixed and that the consent of the Senate is necessary to his removal as well as to his appointment. It should be stated, however, in this connection, that Congress has no constitutional authority to deprive the President of the power of removal of executive officers where they have been appointed by the President by and with the advice and consent of the Senate. (See Myers, Administratrix *v.* United States, 272 U. S. 52.) It will be observed, also, that with the possible exception of the Secretary of Commerce and the Secretary of Labor (hereinafter noted) it is the only instance where existing law makes any provision for the term of office of any of the heads of departments.

DEPARTMENT OF THE NAVY

The Navy Department was established by the act of April 30, 1798 (1 Stat. 553). It was provided that the head should be designated as the "Secretary of the Navy," but nothing was said in the act regarding the tenure of office of the Secretary and no later act has in any way modified the original one. This act later became section 415 of the Revised Statutes and is now section 411 of title 5 of the United States Code.

DEPARTMENT OF THE INTERIOR

The Department of the Interior was created by the act of March 3, 1849 (9 Stat. 395), and provision was made in the act for the Secretary of the Interior as the head of the department. Unlike the other acts establishing the other departments, this act specifically provided that the Secretary "shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall hold his office by the same tenure and receive the same salary as the Secretaries of the other executive departments."

Under this act it would probably have required the consent of the Senate for the removal of the Secretary, but when the Revised Statutes were enacted the act was changed and all reference to the method of appointment of the head of the department and his tenure of office was omitted. (Rev. Stat. sec. 437.) This section of the Revised Statutes is now section 481 of title 5 of the United States Code.

DEPARTMENT OF AGRICULTURE

The Department of Agriculture was established with a Commissioner of Agriculture as the head by the act of May 15, 1862 (12 Stat. 387). This act provided, in section 2, "That there shall be appointed by the President, by and with the advice and consent of the Senate, a 'Commissioner of Agriculture,' who shall be the chief executive officer of the Department of Agriculture, who shall hold his office by a tenure similar to that of other civil officers appointed by the President, and who shall receive for his compensation a salary of $3,000 per annum." The law was afterwards changed by the act of February 9, 1889 (25 Stat. 659).

The amendatory act changed the name of the head of the department to that of "Secretary of Agriculture" and reenacted the provision as to the method of appointing the head, but omitted entirely the provision relating to his tenure of office, hence as the law now stands there is no statute making any reference to the term of office of the Secretary of Agriculture. The statute covering the subject is now found in sections 511 and 512 of title 5 of the United States Code.

DEPARTMENTS OF LABOR AND OF COMMERCE

The legislative history of these two departments is considerably intermingled. The Department of Labor was first established by the act of June 13, 1888 (25 Stat. 182). The head of the department was designated as a Commissioner of Labor and it was provided that he "shall be appointed by the President, by and with the advice and consent of the Senate; he shall hold his office for four years, unless sooner removed, and shall receive a salary of $5,000 per annum." By the act of February 14, 1903 (32 Stat. 825) the Department of Commerce and Labor was established, and the Department of Labor as theretofore existing was merged with the new department thus created. It was provided that the head of this new department should be the "Secretary of Commerce and Labor." This act provided that the head of the department "shall be appointed by the President, by and with the advice and consent of the Senate, who shall receive a salary of $8,000 per annum, and whose term and tenure of office shall be like that of the heads of the other executive departments." This provision as to the method of appointment of the head of the department and as to his term and tenure of office has not been changed by Congress since its original enactment. It is now contained in section 591 of title 5 of the United States Code, the act establishing the Department of Commerce.

This remained the law, and the Department of Commerce and Labor remained as one department until the passage of the act of March 4, 1913 (37 Stat. 736), when the Department of Commerce and Labor was separated by the creation, for the second time, of a Department of Labor. In this act the head of the Department of Commerce remained as the "Secretary of Commerce," and it was provided that the head of the new Department of Labor should be designated as the "Secretary of Labor." This act separating the departments and creating the Department of Labor as a separate department contained the same provision as to the tenure of office of the Secretary of Labor as is contained in the law providing for the tenure of office of the Secretary of Commerce, to wit: "* * * who shall be the head thereof, to be appointed by the President, by and with the advice and consent of the Senate, * * * and whose tenure of office shall be like that of the heads of the other executive departments."

It will be seen, therefore, that the laws in regard to the tenure of office of the Secretary of Commerce and of the Secretary of Labor are indefinite. They fix the terms of office of these two Secretaries by reference to the terms of office of other heads of departments, wherein, with the exception of the Postmaster General, no term is fixed by law. It would hardly be reasonable to suppose that Congress intended in these two instances, when it said "and whose tenure of office shall be like that of the heads of the other executive departments," that it had reference to the tenure of office of the Postmaster General when that office was the only one of the entire list where the law specifically fixed the term of office. It is not reasonable to suppose that Congress in the passage of these two acts had in mind the exception rather than the general rule, and since the tenure of office as to all of the heads of departments except the Postmaster General is not fixed by statute, it would follow that Congress in enacting these statutes applying to the Departments of Commerce and Labor did not fix any tenure of office for the heads of those two departments.

The Constitution nowhere fixes the terms of office of the heads of departments and, with the exception of the Postmaster General, there is no law of Congress fixing any of these terms. We, therefore, conclude that with the exception of the Postmaster General the heads of all the executive departments of the Government may legally hold office as such after the expiration of the term of the President by whom appointed.

HISTORICAL PRECEDENTS

An examination of the precedents discloses that heads of executive departments have continued to hold office as such after the expiration of the term of the President by whom they were appointed in a total of 110 instances.

During the second term of President Washington, Timothy Pickering, of Pennsylvania, was appointed Secretary of State. He held the position during the remainder of Washington's term and continued without reappointment after the inauguration of John Adams. After he had served as such Secretary of State during three years of Adams's administration he was asked to resign and refused to do so. He was dismissed by President Adams on May 12, 1800.

It would appear from this that the statesmen of the early days who had much to do with the framing of the Constitution, many of whom actively participated in the framing of that instrument, were of the opinion that unless Congress definitely fixed a term of office for the heads of departments, such officials would remain in office indefinitely. The case of Mr. Pickering seems to be important as showing the opinion of men who were actively administering the affairs of Government soon after the Constitution was adopted.

The practice of holding over without reappointment was general until the passage of the act of March 2, 1867, limiting the term of heads of departments to four years and one month. This provision of law was in force only two years when it was repealed. While the practice since that time has not been uniform, it has been sufficiently so to clearly show that all those in authority took it for granted that with the exception of the Postmaster General, the heads of all executive departments of the Government held their respective positions indefinitely, subject to removal at any time by the President.

The following table, prepared by Mr. Cozier, assistant clerk of the Judiciary Committee, shows the instances where heads of departments have held office without reappointment, after the expiration of the term of the President by whom they were appointed:

Table showing instances where heads of departments have held office, without reappointment, after the expiration of the term of the President by whom they were appointed

Washington, 1793, Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, and Postmaster General	5
Adams, 1797, Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, and Postmaster General	5
Jefferson, 1801, Secretary of the Treasury, Secretary of the Navy, and Postmaster General	3
Jefferson, 1805, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, and Postmaster General	5
Madison, 1809, Secretary of the Treasury, Secretary of the Navy, Attorney General, and Postmaster General	4
Madison, 1813, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Monroe, 1817, Secretary of the Navy, Attorney General, and Postmaster General	3
Monroe, 1821, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Adams, 1825, Secretary of the Navy, Attorney General, and Postmaster General	3
Jackson, 1829, Postmaster General	1
Jackson, 1833, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Van Buren, 1837, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Harrison, 1841	None.
Tyler, 1841, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Polk, 1845	None.
Taylor, 1849	None.
Fillmore, 1850	None.
Pierce, 1853	None.
Buchanan, 1857	None.
Lincoln, 1861	None.
Lincoln, 1865, Secretary of State, Secretary of War, Secretary of the Navy, Secretary of the Interior, Attorney General, and Postmaster General	6
Johnson, 1865, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Attorney General, and Postmaster General	7
Grant, 1869	None.
Grant, 1873	None.
Hayes, 1877	None.
Garfield, 1881	None.
Arthur, 1881, Secretary of War, Secretary of the Navy, and Secretary of the Interior	3
Cleveland, 1885	None.
Harrison, 1889	None.
Cleveland, 1893	None.
McKinley, 1897	None.
McKinley, 1901	None.
Roosevelt, 1901, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, and Postmaster General	8
Roosevelt, 1905	None.
Taft, 1909	None.
Wilson, 1913	None.
Wilson, 1917, Secretary of State, Secretary of War, Secretary of the Treasury, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, and Attorney General	9
Harding, 1921	None.
Coolidge, 1923, Secretary of State, Secretary of War, Secretary of the Treasury, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Attorney General, and Postmaster General	10
Coolidge, 1925, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Secretary of Commerce, and Secretary of Labor	6
Hoover, 1929, Secretary of the Treasury and Secretary of Labor	2
Total	110

NOTE.—Table does not include instances where officers held over for only a few weeks or less.

IS SECRETARY MELLON LEGALLY QUALIFIED TO HOLD THE OFFICE OF SECRETARY OF THE TREASURY?

The second question asked by the Senate resolution relates to the qualifications of Secretary Mellon to hold the office of Secretary of the Treasury. This question, it is obvious on its face, is a mixed question of fact and law.

To ascertain the facts the committee accepted without question the statements made by Secretary Mellon in a letter which he addressed to Senator DAVID A. REED, and which was by him read to the committee. Other statements made by Senator REED before the committee supplementing the letter were likewise accepted by the committee as a true outline of the facts so far as they are necessary to construe the law. These facts, so far as they apply to the inhibitions contained in section 243 of title 5 of the Code of Laws are, in substance, as follows:

AGREED STATE OF FACTS

Prior to taking the office of Secretary of the Treasury, in March, 1921, Mr. Mellon resigned every office which he then held in any corporation engaged in the business of trade or commerce, and resigned all his directorates in such corporations, and he has not been since that time, and is not now, a director or officer in any such corporation. He did not, however, dispose of his stock in such corporations and is still the owner of stock in many corporations engaged in the business of trade or commerce.

Mr. Mellon likewise not only resigned every office he held in any national bank, trust company, or other banking institution, but he sold all the shares of stock which he owned in such banking institutions.

At the time Mr. Mellon took the office of Secretary of the Treasury he owned, and still owns a substantial amount of stock in the Gulf Oil Corporation of Pennsylvania, the Aluminum Co. of America, the Standard Steel Car Co., and various other business corporations, all of which are engaged in the business of trade or commerce. He does not own a controlling interest in the stock of any of these corporations. The stock which he does own, in connection with the stock owned by members of his family and close business associates, does, however, in many cases, constitute a majority of the stock of the corporation, and, in some instances (including some of the corporations above mentioned), constitutes ownership of practically the entire outstanding capital stock.

Since Mr. Mellon has been Secretary of the Treasury he has not controlled or directed the business operations of any of these corporations and has not taken part in the adjudication or settlement of any Federal taxes assessed against such corporations.

It is conceded that Mr. Mellon has not purchased by himself, or another in trust for him, any public lands or other public property; that he has not been concerned and is not now concerned in the purchase or disposal of any public securities of any State or of the United States; and that he has not at any time taken or applied to his own use any emoluments or gain for negotiating or transacting any business in the Treasury Department.

THE LEGAL QUESTION INVOLVED

The statute cited in the Senate resolution, in so far as it applies to the question now under discussion, reads as follows:

"No person appointed to the office of the Secretary of the Treasury * * * shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be the owner in whole or in part of any sea vessel * * *."

Under these admitted facts, the questions presented to the committee are: (1) Is ownership of a substantial amount of stock by the Secretary of the Treasury, in a corporation engaged in carrying on the business of trade or commerce, a violation of the statute? (2) Is the ownership of a substantial amount of stock by the Secretary of the Treasury in a corporation owning a sea vessel a violation of the statute? Both of these questions must be answered in the affirmative.

The first question might be simplified by asking: Is a person owning stock in a corporation even indirectly concerned or interested in the business of such corporation? In this simplified form the question answers itself.

To deny that the owner of stock in a corporation is interested in the business of such corporation is a violation of all logic and reason; and to assert that the owner of such stock is not even indirectly "concerned or interested" in the business of the corporation must impress the minds of honest people as being ridiculous. When we add to this the proposition that the ownership of stock in a corporation is substantial and that in connection with the stock owned by relatives and close business associates it constitutes a controlling interest in the corporation, and in some cases constitutes the ownership of practically all the outstanding stock of the corporation, we have reached a point where no reasonable mind, by any possibility, can conceive that the owner of such stock is not only indirectly, but directly and positively, interested in the business of the corporation. By no legal or judicial legerdemain or method of reasoning can any conclusion be reached in such a case, except that the owner of such stock must be, and necessarily is, interested in the business of the corporation. There is positively no way for such person to avoid such interest or to disassociate his interest from such corporation except, in good faith, to dispose of his stock therein.

It is common knowledge that the Gulf Oil Corporation of Pennsylvania, the Aluminum Co. of America, and the Standard Steel Car Co. are among the largest business corporations of the United States. Their business operations annually run into the millions. A person who owns a "substantial" amount of the stock of these corporations and who, in connection with members of his family and close business associates, can ordinarily control the operations of such corporations, is not only interested but has it in his power to affect and control some of the most important business operations of the world. To say that such a person is not interested in the business operations of any of these corporations is to offend the reasoning process of all logical minds.

Several years ago when the law provided that the amount of income taxes paid by any citizen should be public, it became known that the income tax paid by Mr. Mellon exceeded $1,000,000. From the agreed state of facts he must have a vast fortune tied up in stock ownership of some of the greatest business corporations in the country and his income to a large extent, if not entirely, must come from his ownership of stock in these corporations. Can it be asserted with any reason or logic that he is not interested in the business which they transact? Can it be honestly claimed that he is not even "indirectly interested" or that he is not even "indirectly concerned"? These questions are too simple and the answers are too self-evident to admit of discussion or doubt.

GULF OIL CORPORATION OF PENNSYLVANIA

The Gulf Oil Corporation, referred to above, and which, it is admitted, Mr. Mellon and members of his family and close business associates, completely dominate and control, is one of the largest, if not the largest, corporation of its kind in the world. We give the following information from Moody's Manual for 1927:

"Through its subsidiaries which it owns it operates thousands of oil wells producing several hundred thousands of barrels of crude oil per day. It owns several thousand miles of pipe lines and large refineries in different parts of the world. It owns and operates ocean-going steamers, barges, and tugs, together with harbor barges, etc. It has bulk-distributing stations located on Gulf of Mexico and Atlantic seaboard, including Galveston, New Orleans, Mobile, Tampa, Jacksonville, Savannah, Charleston, Bayonne, Philadelphia, New York, Providence, and Beverly. From these points oil is marketed through over 1,500 sales stations. Net production in 1926, after deducting all royalties and working interests, was over 44,000,000 barrels of crude oil. Deliveries in 1926 were 46,900,000 barrels. Some of these subsidiaries are as follows:

"Eastern Gulf Oil Co.: Properties located in Kentucky. Capital stock, $50,000.

"Gulf Pipe Line Co.: Located in Texas. Capital stock, $3,500,000.

"Gulf Pipe Line Co. of Oklahoma: Capital stock, $1,000,000.

"Gulf Production Co.: Producers of petroleum. Owns leases on thousands of acres in Texas. Capital stock, $2,250,000.

"Gulf Refining Co.: Transports and sells petroleum and by-products. Refineries located at Port Arthur, Fort Worth, Tex., and Bayonne, N. J.; total capacity, 150,000 barrels daily. Capital stock, $15,000,000.

"Gulf Refining Co. of Louisiana: Sells petroleum products. Capital stock, $1,000,000.

"Gypsy Oil Co.: Properties located in Oklahoma and Kansas. Capital stock, $500,000.

"Mexican Gulf Oil Co.: Incorporated in Delaware to prospect for and produce petroleum in Mexico. Capital stock, $200,000.

"South American Gulf Oil Co.: Incorporated in Delaware; engaged in exploration and development work in South America. Capital stock, $25,000.

"Venezuela Gulf Oil Co.: Incorporated in Delaware to produce oil in Venezuela and other South American countries. Capital stock, $50,000."

These are only a portion of the subsidiaries owned by this great corporation. A full list, with more detailed information, can be found in Moody's Manual of Investments for 1927.

It should be added that through these subsidiaries this corporation has often done business with the Government of the United States and is a bidder upon contracts let by the Government for supplies in which these various subsidiaries deal.

THE OWNER, IN WHOLE OR IN PART, OF A SEA VESSEL, IS DISQUALIFIED FROM HOLDING THE OFFICE OF SECRETARY OF THE TREASURY

The statute we are construing says that "no person appointed to the office of Secretary of the Treasury * * * shall * * * be owner in whole or in part of any sea vessel * * *."

The corporation above named, according to Moody's Manual, an accepted authority, owns "25 ocean-going steamers, 7 barges, 6 tugs, and 2 motor ships, together with harbor barges, etc."

There is no opportunity here to quibble over the meaning of "business" or "carrying on business" or being directly or indirectly concerned or interested in "carrying on the business of trade or commerce." The statute specifically states that anyone owning, in whole or in part, a sea vessel, shall be disqualified from holding the office of Secretary of the Treasury. This is independent of "business" or of "carrying on business." The thing which the statute interdicts is the ownership, in whole or in part, of a sea vessel.

Regardless of any construction which, by any method of reasoning, is put upon the other portion of the statute, it must be admitted that the statute disqualifies any person from holding the office of Secretary of the Treasury who is the owner of a sea vessel.

It certainly will not be contended that "ocean-going steamers" are not sea vessels. On the other hand, it seems plain that the object of Congress in the early days in prohibiting the ownership of a sea vessel applies with equal force to the present day, and with increasing force when applied to a man of Secretary Mellon's national and international business connections.

It seems clear that either Mr. Mellon must be held to be disqualified or we must close our eyes to the plain provision of a definite statute. Neither can it be claimed that the law does not apply to him because these vessels are owned by a corporation in which he is a substantial stockholder. It might be argued that he does not himself personally own the entire interest of these ocean-going vessels, but it must be admitted that to the extent of his stock ownership in the corporation he is at least a part owner, and the statute interdicts the ownership in part as well as the entire ownership.

ALUMINUM CO. OF AMERICA

The Aluminum Co. of America is the largest corporation of its kind in the world. Its primary business is the smelting of aluminum from its ore. This business is carried on at Niagara Falls and Massena, N. Y.; Alcoa, Tenn.; Badin, N. C.; Shawinigan Falls and Arvida, Province of Quebec; and in Norway. For the purpose of its business the company utilizes more than 500,000 horsepower. Hydroelectric plants for the development of electric power are either owned by the company or are controlled under long-term leases. In addition, the company owns several undeveloped water powers which, when developed, will more than double its present supply of power. The company also does an extensive fabricating business, producing aluminum sheets, rod, wire, tubes, castings, and other similar forms. Mills are located at Alcoa, Tenn.; New Kensington, Pa.; Edgewater and Garwood, N. J.; Buffalo, Niagara Falls, and Massena, N. Y.; Cleveland, Ohio; Detroit, Mich.; Fairfield, Conn.; Toronto, Ontario; and Shawinigan Falls, Province of Quebec. The company owns its own bauxite mines in Arkansas, South America, and several European countries and has its plant for the preliminary refining of bauxite at East St. Louis, Ill. The corporation not only does business direct, but it owns a large number of subsidiaries. Among them may be mentioned the following: St. Lawrence Water Co., Demerara Bauxite Co., United States Aluminum Co., St. Lawrence River Power Co.

This corporation also owns the Aluminum Co. of Canada and has leased property of the Aluminum Manufacturers (Inc.) for 25 years from July 1, 1922. In addition, the Aluminum Co. of America owns the entire capital stock of the Alton & Southern Railway Co.

Further detailed information can be obtained from an examination of Moody's Manual, 1927, from which the above data is quoted.

It is common knowledge that the Aluminum Co. of America deals principally in products which are highly protected by the tariff. Mr. Mellon, as Secretary of the Treasury, controls the administration of the tariff laws, and in their administration he is dealing with his own corporation, in which he has a substantial interest, and in which, as a stockholder, he, together with his close associates, has a dominating control.

STANDARD STEEL CAR CO.

The Standard Steel Car Co., incorporated under the laws of Pennsylvania, manufactures steel and composite (steel and wood) cars. It has plants located at Butler, Middletown, and New Castle, Pa.; Hammond, Ind.; and Baltimore, Md. This corporation controls the Middletown Car Co. and the Baltimore Car & Foundry Co. In 1925 it purchased the Siems-Stembel Co., covering 25 acres in St. Paul and Minneapolis, Minn. In 1926 it obtained an interest in the Columbia Steel Co. at Elyra, Ohio. It owns the Forged Steel Wheel Co. at Butler, Pa. It has an authorized capital stock of $50,000,000.

These are only samples of Mr. Mellon's stock ownership in various kinds of corporations, all actively engaged in trade and commerce. Their operations cover nearly the entire civilized world. He and his associates, under the admitted facts, are interested in and control some of the most gigantic financial operations in the world. They are interested directly in the tariff, in the levying and collection of Federal taxes, in the shipping of products upon the high seas. Most of the products of these corporations are protected by our tariff laws, and Mr. Mellon has direct charge of the enforcement of these laws.

It is not necessary that it be shown that he has taken advantage of his position to give preference to these corporations in which he has a direct interest. The law does not state that before its inhibitions apply the Secretary of the Treasury must be found guilty of malfeasance in office in the way of giving invaluable favor to corporations in which he has a direct interest. It is sufficient under this statute to disqualify Mr. Mellon that it appear that he is either directly or indirectly interested in the business of trade or commerce. It would perhaps be impossible to find in the United States a single citizen who has a greater interest in the business of trade or commerce. In the financial world Mr. Mellon has perhaps more at stake in the carrying on of trade or commerce than any other one citizen of the United States. He is not only "interested" but, under the admitted facts, he is one of the dominating and controlling influences in the business world.

A stockholder of a corporation shares in the profits of the corporation. He suffers financially when the operations of the corporation are unprofitable. Upon dissolution of the corporation he has a right to share in the assets. All of these things conclusively imply that he is necessarily interested in the business of the corporation. If the corporation engaged in business is successful, he makes a profit. If its business operations are failures, he suffers a loss. The property which it acquires in its business operations, upon dissolution of the corporation, belongs to the stockholder, and this property is great or small in proportion to the success or failure of the corporation in its business transactions. He is interested not only indirectly but directly in every transaction of the corporation. He can not disassociate himself from such interest except to part title with the ownership of his stock. These propositions, without exception, have been upheld and reasserted time and again by judicial determination. (Gibbons *v.* Mahon (1890), 136 U. S. 590; Eisner *v.* Macomber (1920), 252 U. S. 189; R. I. Trust Co. *v.* Doughton (1926), 270 U. S. 69; Collector *v.* Hubbard (1871), 12 Wall. 1; Lynch *v.* Thurrish (1918), 247 U. S. 221.)

A STOCKHOLDER'S INTEREST IN A CORPORATION IS AN INSURABLE INTEREST

It has been held that a stockholder's interest in corporate property is an insurable interest, not based on legal title, but on the right to gains or profits, etc. (Seaman *v.* Enterprise Fire & Marine Insurance Co., 21 Fed. 778, 784; Warren *v.* Davenport Insurance Co. (1871), 31 Iowa, 464.)

In the case of Seaman *v.* Enterprise Fire & Marine Insurance Co., above cited, it is stated in the syllabus as follows:

"An owner of stock in a corporation has an insurable interest in the corporate property in proportion to the amount of his stock."

In the other case cited (Warren *v.* Davenport Insurance Co., 31 Iowa, 464), where the question was distinctly presented, the Supreme Court of Iowa affirmed that a stockholder did have an insurable interest.

A STOCKHOLDER IN A CORPORATION IS DISQUALIFIED TO ACT AS JUDGE

Stockholders have a direct interest in the business of the corporation, and such interest, it has been held, disqualifies a stockholder to act as a judge or juror in a suit in which such corporation is interested. (In re Honolulu Consolidated Oil Co., C. C. A. 9th cir. 1917, 243 Fed. 348.)

The syllabus of this case, in so far as it applies to this question, reads as follows:

"* * * a judge owning stock in one of such oil companies is disqualified to sit on the trial of such a suit against another of such oil companies, under Judicial Code (act March 3, 1911, c. 231), providing that, whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, it shall be his duty to enter the fact on the records and certify an authenticated copy thereof to the senior judge for the circuit."

As applying to the disqualifications of the judge on account of being a stockholder in a corporation involved in litigation before such judge, we cite the following: State *v.* Mach (1902), 26 Nev. 430; First National Bank *v.* McGuire (1899), 12 S. D. 226; Queens-Nassau Mortgage Co. *v.* Graham (1913), 142 N. Y. Supp. 589; Anderson *v.* Commonwealth (Ky. 1909), 117 S. W. 364; Adams *v.* Minor (1898), 121 Cal. 372; King *v.* Thompson (1877), 59 Ga. 380.

In the case of Queens-Nassau Mortgage Co. *v.* Graham, above cited, it was held by the Supreme Court of Iowa that where a judge is a stockholder in a corporation, he is interesfed in any case in which the corporation is a party, and even the consent of the parties to the action can not qualify him to sit in such a case.

A STOCKHOLDER IN A CORPORATION IS DISQUALIFIED TO ACT AS JUROR

A person called as a juror is disqualified from acting as such in a case where he is a stockholder in the corporation which is a party involved in the litigation. (Martin *v.* Farmers Mutual Fire Ins. Co. (1905), 139 Mich. 148; Peninsular Ry. Co. *v.* Howard (1870), 20 Mich. 18; Sovereign Camp W. O. W. *v.* Ward (1916), 196 Ala. 327.)

In the case of Martin *v.* Farmers Mutual Fire Insurance Co., the Supreme Court of Michigan distinctly held that in an action against a mutual fire-insurance company, the members thereof are interested and are incompetent to sit as jurors in any case in which a mutual insurance company is a party, and this is true even where the jurors upon oath declared that they "were free from bias and prejudice." In this case the court, in the opinion, said:

"The disqualification of a judge or juror to sit in a case is a question of vital interest to more than the parties to a suit. It involves the administration of justice before disinterested, unprejudiced, and impartial tribunals."

CONTRACT OF CORPORATION WITH MUNICIPALITY IS VOID IF MAYOR OR MEMBERS OF CITY COUNCIL ARE STOCKHOLDERS

Most States have statutes which prohibit officers of any municipality from being interested in contracts with such municipality. Under such statutes it is universally held that where the mayor or members of the city council are stockholders in a corporation, such interest is sufficient to invalidate any contract between the municipality and the corporation. It is universally held that stock ownership in a corporation

getting a contract from a municipality by a member of the council falls under the condemnation of such a statute. (II, Dillon on Municipal Corps. (5th Ed.), sec. 773, p. 1147; III, McQuillan on Municipal Corp., sec. 1354; San Diego *v.* San Diego, 44 Cal. 106; Noble *v.* Davidson, 177 Ind. 19; 28 Cyc. 653; 44 Corpus Juris, 93.)

In Noble *v.* Davidson (177 Ind. 19), above cited, the court canvasses at length the principle involved and gives its reasons for holding that such "interest" invalidates the contract.

A STOCKHOLDER IN THE CORPORATION IS DISQUALIFIED AS A WITNESS

Where the statute makes a witness incompetent if he is interested in the result of the suit, the court held that a stockholder of a corporation is an incompetent witness where the corporation is interested as a party to the case. In the case of Dickenson *v.* Columbus State Bank (Nebr. 1904, 98 N. W. 813) the Supreme Court of Nebraska, in passing upon this question, said:

"Plaintiff objected to the evidence of defendant's president, Gerrard, as to transactions had with the deceased, Murdock, as being excluded by section 329, Code Civ. Proc. It was testimony of an interested party as to transactions with a deceased person against an assignee of the deceased. Unless testimony as to such transactions had been introduced by the other side, it was inadmissible. There seems no doubt that Mr. Gerrard's interest as a stockholder of the bank is a 'direct legal interest,' and disqualified him under the terms of the statute."

To the same effect is the decision in Tecumseh National Bank *v.* McGee (61 Nebr. 709; 85 N. W. 949).

It is also quite generally held that a stockholder of a corporation has such an "interest" that he can not take the acknowledgment of a conveyance to such corporation. (Southern Iron & E. Co. *v.* Voyles, 41 L. R. A. (N. S.) 375. See also notes there cited.)

STOCKHOLDER'S INTEREST SUFFICIENT TO MAKE HIM LIABLE FOR TAXES

Under section 3251 of the Revised Statutes, persons interested in the use of a distillery were held liable for taxes on it. This section says:

"* * * Every person in any manner interested in the use of any still, distillery, or distilling apparatus shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom."

It was held by the Solicitor General of the United States (April 23, 1876) that under this statute a stockholder in a distilling corporation not otherwise liable for the debts of the corporation beyond the amount of his stock therein, was liable individually for such taxes and that his individual property in no way connected with the business of such corporation could be seized and restrained for taxes due on spirits produced by the corporation.

In the case of United States *v.* Wolters et al. (C. C. S. D. Cal. 1891, 46 Fed. 509), it was held that stockholders of a corporation engaged in operating a distillery are liable for taxes under the statute which declares, "and every person in any manner interested in the use of" a distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom. In this case the court said:

"The holder of stock in a corporation organized for and engaged in the business of distilling spirits, if not the proprietor or possessor of the distillery within the meaning of the statute, is certainly 'interested in the use of' the distillery operated by the corporation of which he is a stockholder. He has a direct, pecuniary interest in the business of distilling—the purpose for which the distillery is used—as well as in the property itself. The amount of such interest, whether large or small, is of no consequence. The statute declares that every person so interested shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom."

See, also, to the same effect: Richter *v.* Henningson (1895), 110 Cal. 530; 15 Op. A. G. 559; 16 Op. A. G. 10.

INTEREST OF STOCKHOLDER ENTITLES HIM TO BRING SUIT

The interest of stockholders has been recognized in their right to bring suit on behalf of the corporation when the proper officers neglect a duty to enforce its rights, and to bring suit to restrain ultra vires acts. (Kelly *v.* Dolan (D. C. E. D. Pa. 1914), 218 Fed. 966; Leo *v.* U. P. Ry. Co. (C. C. S. D. N. Y. 1884), 17 Fed. 273; Siegman *v.* Electric Vehicle Co. (C. C. D. N. J. 1905), 140 Fed. 117.)

There was submitted, on behalf of the contention of Mr. Mellon, a brief written by Messrs. Faust and Wilson, attorneys, which was printed in the CONGRESSIONAL RECORD of March 31, 1924 (p. 5246), and also an opinion by Hon. William D. Mitchell, the present Attorney General of the United States. The opinion of the Attorney General was prepared at the request of the President of the United States. The writers of these briefs have reached the conclusion that under the statute heretofore quoted and the agreed state of facts above set forth, Mr. Mellon is not disqualified from holding the office of Secretary of the Treasury. The Attorney General, in reaching his conclusion, as did also Messrs. Faust and Wilson, placed great stress upon the case In re Deuel (127 App. Div. 640), to the effect that the ownership of stock in a corporation does not constitute carrying on the business of the corporation.

These eminent attorneys are led into a false theory which has no application whatever to the case of Secretary Mellon. No one claims that Mr. Mellon is carrying on any trade or business. It is frankly admitted that he is not engaged in business and is not carrying on business. There is a vast difference—one that is clearly defined by the courts—between carrying on business or being engaged in business and having an interest in any trade or business.

A person is engaged in business and is carrying on business when he has something to do with the management of the same; but he may be interested in any trade or business and be interested or concerned in the carrying on of such trade or business, without having anything to do in the way of management or direction of the business. In fact, the person who is not managing a trade or business may be much more directly "interested or concerned" in the business than the one who is actually at the head of the concern, directing it. This is particularly true in the case of corporations. The stockholders, after all, are the ones who are most directly and vitally interested in the business of the corporation and in the way and manner in which it is carried on. The manager or director may have no interest except in the position which he holds, while the stockholder may have the savings of a lifetime invested in the corporation and may, in fact, be much more concerned and more deeply interested than the hired man who manages the business.

In the case last cited the New York court was construing a statute which provided that no justice should carry on any business, and an attempt was made to disqualify Judge Deuel from holding office on the ground that he was carrying on a business. It was admitted on the trial that the judge was a stockholder in a corporation and that he was vice president of such corporation, but, in the syllabus of the case the court says that, as such vice president, he was not charged with any specific duties, was not actively engaged in the conduct of the business, was not responsible to the corporation or its stockholders for the conduct or the management of the business, and was not actively interfering in any way in relation to it, and, therefore, he had not violated the statute which forbade a justice to carry on any business.

The statute relating to the duty of the justice provided, among other things:

"nor shall any such justice hold any other public office, or carry on any business * * * but each such justice shall devote his whole time and capacity, so far as the public interests demand, to the duties of his office."

The object of the law seems to have been to require the justice to devote his time and abilities to his official duties and in order to do this it was provided that he should not carry on any other business.

In the body of the opinion the court said:

"It would serve no useful purpose to analyze this voluminous testimony and I shall attempt to do no more than to state the conclusion at which I have arrived. I do not find it proved that this relator accepted any office in this corporation that imposed upon him any active duties in relation to the corporation itself or the business that it conducted. He was vice president of the corporation, but charged with no specific duties in relation to it. There is no evidence that he actively engaged in the conduct of the business of the corporation; that he was responsible, either to the corporation or to its stockholders, for the conduct or management of the business, or that he actively interfered in any way in relation to it. In fact, the evidence is all the other way. Certainly if no one did anything more for this business than the respondent did, or was under obligation to do, the business would not have been carried on at all, and the conclusion that I have arrived at is that the charge of a violation of section 1416 of the charter is not sustained."

It should be noted in passing that in this case there was nothing pending before the judge in the way of litigation in which the corporation, of which he was a stockholder, was a party.

If this corporation in which he was a stockholder had been a party to a suit pending before him, and the court had held that such "interest" did not disqualify the judge from sitting, then there would be some reason for citing the case in support of the contention that Mr. Mellon's ownership of stock does not in any way constitute an interest; but, from the admitted facts of the case, it is perfectly plain that it has no application whatever to the question pending before the Committee on the Judiciary.

The Attorney General, in his opinion, also relies upon the case In re Levy (198 App. Div. 326) as sustaining his contention. A careful examination of this case will convince anyone that it has no application to the case of Secretary Mellon. The court decided in that case, as it did in the Deuel case, that the ownership of stock in a corporation did not constitute an offense upon the part of the judge such as would make him liable to removal from office. This decision was a construction of the same statute as was passed on in the Deuel case, and the court only held that the ownership of stock in a corporation, where the owner of the stock had nothing whatever to do with the management of the corporation, was not an officer or manager in any way, and was not "engaged in any other business or profession," did not offend the statute.

This case and the other case cited by the Attorney General in his opinion on this branch of the subject only demonstrates that the Attorney General and Messrs. Faust and Wilson have devoted considerable of their time and their great abilities in an attempt to show that the ownership of stock in a corporation is not, in and of itself, the carrying on of a business or profession—a proposition, as stated before, about which there is no contention and which has no bearing upon the question involved in the case before the committee as to whether the owner of stock in a corporation is "interested" in the business of the corporation.

The cases cited in these briefs, with the one apparent exception hereinafter noted, are all based on the imaginary claim that it is sought to disqualify Secretary Mellon because he is "engaged in business" or is "carrying on a business." They have no bearing upon the question of being "interested" in a business, and, therefore, they have no application or bearing upon the question submitted by the Senate to its Judiciary Committee. The question of whether the ownership of stock in a corporation constitutes the carrying on of business is not necessarily involved in the matter before us.

The exception above referred to is the case of United States *v.* Delaware & Hudson Co. (213 U. S. 366). In this case the Supreme Court of the United States was called upon to place a construction upon the commodities clause of the Hepburn Act. There were several cases involved in this decision. They were all cases between the United States and various railroad companies. These defendants were all engaged in the mining of coal as well as in its transportation in interstate commerce. The clause in the Hepburn Act under consideration in these cases reads as follows:

"From and after May 1, 1908, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

The constitutionality of the act was at issue. A careful reading of this very lengthy and laborious opinion will convince anyone that the court was extremely anxious not to declare the act null and void as being in contravention to the Constitution of the United States.

These railroads, it was conceded, had for many years been engaged in the mining of coal, as well as in its transportation. They had been encouraged to invest in coal mines and to go into the business by the State legislature. In accordance with the laws of the State and the constitution of the State they had been carrying on this business for many years and, if the court had given effect to the restrictive clause which would ordinarily be given by a careful student, it would have been compelled to nullify the laws of the State and would have necessarily confiscated many millions of dollars worth of property which the railroad companies had invested in accordance with their charters and in accordance with the constitution and laws of the State. In describing this condition that had arisen under State laws prior to the passage of the Hepburn Act, the court said:

"The general situation is that for half a century or more it has been the policy of the State of Pennsylvania, as evidenced by her legislative acts, to promote the development of her natural resources, especially as regards coal, by encouraging railroad companies and canal companies to invest their funds in coal lands, so that the product of her mines might be conveniently and profitably conveyed to market in Pennsylvania and other States. Two of the defendant corporations, as appears from their answers, were created by the Legislature of Pennsylvania, one of them three-quarters of a century ago and the other a half century ago, for the express purpose that its coal lands might be developed and that coal might be transported to the people of Pennsylvania and of other States. It is not questioned that pursuant to this general policy investments were made by all the defendant companies in coal lands and mines and in the stock of coal-producing companies, and that coal production was enormously increased and its economies promoted by the facilities of transportation thus brought about. As appears from the answers filed, the entire distribution of anthracite coal in and into the different States of the Union and Canada for the year 1905 (the last year for which there is authoritative statistics), was 61,410,201 tons; that approximately four-fifths of this entire production of anthracite coal was transported in interstate commerce over the defendant railroads, from Pennsylvania to markets in other States and Canada, and of this four-fifths, from 70 to 75 per cent was produced either directly by the defendant companies or through the agency of their subsidiary coal companies.

"It also appears from the answers filed that enormous sums of money have been expended by these defendants to enable them to mine and prepare their coal and to transport it to any point where there may be a market for it. It is not denied that the situation thus generally described is not a new one, created since the passage of the act in question, but has existed for a long period of years prior thereto, and that the rights and property interests acquired by the said defendants in the premises have been acquired in conformity to the constitution and laws of the State of Pennsylvania, and that their right to enjoyment of the same has never been doubted or questioned by the courts or people of that Commonwealth, but has been fully recognized and protected by both."

In discussing the constitutional questions presented to the court, the Chief Justice, in writing the opinion, used the following language:

"With these concessions in mind, and despite their far-reaching effect, if the contentions of the Government as to the meaning of the commodities clause be well founded, at least a majority of the court are of the opinion that we may not avoid determining the following grave constitutional questions: 1. Whether the power of Congress to regulate commerce embraces the authority to control or prohibit the mining, manufacturing, production, or ownership of an article or commodity, not because of some inherent quality of the commodity, but simply because it may become the subject of interstate commerce. 2. If the right to regulate commerce does not thus extend, can it be impliedly made to embrace subjects which it does not control, by forbidding a railroad company engaged in interstate commerce from carrying lawful articles or commodities because, at some time prior to the transportation, it had manufactured, mined, produced, or owned them, etc.? And involved in the determination of the foregoing questions we shall necessarily be called upon to decide: (a) Did the adoption of the Constitution and the grant of power to Congress to regulate commerce have the effect of depriving the States of the authority to endow a carrier with the attribute of producing as well as transporting particular commodities, a power which the States from the beginning have freely exercised, and by the exertion of which governmental power the resources of the several States have been developed, their enterprises fostered, and vast investments of capital have been made possible? (b) Although the Government of the United States, both within its spheres of national and local legislative power, has in the past for public purposes, either expressly or impliedly, authorized the manufacture, mining, production, and carriage of commodities by one and the same railway corporation, was the exertion of such power beyond the scope of the authority of Congress, or, what is equivalent thereto, was its exercise but a mere license, subject at any time to be revoked and completely destroyed by means of a regulation of commerce?"

In discussing the duty of the court, when presented with such question, the following language was used:

"It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. (Knights Templars Indemnity Co. *v.* Jarman, 187 U. S. 197, 205.) And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional and then proceed to hold that such ruling was unnecessary because the statute is susceptible of a meaning which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter. (Harriman *v.* Interstate Com. Comm., 211 U. S. 407.)"

The Chief Justice then refers to what he regards as inconsistent provisions in the commodities clause itself:

"Recurring to the text of the commodities clause, it is apparent that it disjunctively applies four generic prohibitions; that is, it forbids a railroad carrier from transporting in interstate commerce articles or commodities, 1, which it has manufactured, mined, or produced; 2, which have been so mined, manufactured, or produced under its authority; 3, which it owns in whole or in part; and 4, in which it has an interest, direct or indirect.

"It is clear that the two prohibitions which relate to manufacturing, mining, etc., and the ownership resulting therefrom, are, if literally construed, not confined to the time when a carrier transports the commodities with which the prohibitions are concerned, and hence the prohibitions attach and operate upon the right to transport the commodity because of the antecedent acts of manufacture, mining, or production. Certain also is it that the two prohibitions concerning ownership, in whole or in part, and interest, direct or indirect, speak in the present and not in the past; that is, they refer to the time of the transportation of the commodities. These last prohibitions, therefore, differing from the first two, do not control the commodities if at the time of the transportation they are not owned in whole or in part by the transporting carrier, or if it then has no interest, direct or indirect, in them. From this it follows that the construction which the Government places upon the clause as a whole is in direct conflict with the literal meaning of the prohibitions as to ownership and interest, direct or indirect. If the first two classes of prohibitions as to manufacturing, mining, or production be given their literal meaning, and therefore be held to prohibit, irrespective of the relation of the carrier to the commodity at the time of transportation, and a literal interpretation be applied to the remaining prohibitions as to ownership and interest, thus causing them only to apply if such ownership and interest exist at the time of trans-

portation, the result would be to give to the statute a self-annihilative meaning. This is the case since in practical execution it would come to pass that where a carrier had manufactured, mined, and produced commodities, and had sold them in good faith, it could not transport them; but, on the other hand, if the carrier had owned commodities and sold them it could carry them without violating the law. The consequence, therefore, would be that the statute, because of an immaterial distinction between the sources from which ownership arose, would prohibit transportation in one case and would permit it in another like case. An illustration will make this deduction quite clear: A carrier mines and produces and owns coal as a result thereof. It sells the coal to A. The carrier is impotent to move it for account of A in interstate commerce because of the prohibition of the statute. The same carrier at the same time becomes a dealer in coal and buys and sells the coal thus bought to the same person, A. This coal the carrier would be competent to carry in interstate commerce. And this illustration not only serves to show the incongruity and conflict which would result from the statute if the rule of literal interpretation be applied to all its provisions, but also serves to point out that as thus construed it would lead to the conclusion that it was the intention, in the enactment of the statute, to prohibit manufacturing and production by a carrier and at the same time to offer an incentive to a carrier to become the buyer and seller of commodities which it transported."

Further on in the opinion the court said:

"Looking at the statute from another point of view the same result is compelled. Certain it is that we could not construe the statute literally without bringing about the irreconcilable conflict between its provisions which we had previously pointed out, and therefore some rule of construction is essential to be adopted in order that the statute may have a harmonious operation. Under these circumstances, in view of the far-reaching effect to arise from giving to the first two prohibitions a meaning wholly antagonistic to the remaining ones, we think our duty requires that we should treat the prohibitions as having a common purpose; that is, the dissociation of railroad companies prior to transportation from articles or commodities, whether the association resulted from manufacture, mining, production, or ownership, or interest, direct or indirect. In other words, in view of the ambiguity and confusion in the statute we think the duty of interpreting should not be so exerted as to cause one portion of the statute which, as conceded by the Government, is radical and far-reaching in its operation if literally construed, to extend and enlarge another portion of the statute which seems reasonable and free from doubt if also literally interpreted. Rather it seems to us our duty is to restrain the wider, and, as we think, doubtful prohibitions so as to make them accord with the narrow and more reasonable provisions, and thus harmonize the statute."

When the court came to a discussion of the words "in which it is interested directly or indirectly," included in the commodities clause, it examined the proceedings had in Congress when the Hepburn Act was under consideration. It must be remembered that the cases which the court was deciding involved the construction of a statute which prohibited the common carrier, among other things, from transporting, in interstate commerce, commodities "in which it may have any interest direct or indirect." The railroad company was transporting coal owned by a separate corporation in which the railroad company owned stock, and the question was whether this ownership constituted such an interest in the commodity as to prohibit the railroad company from transporting it in interstate commerce.

In an examination of the CONGRESSIONAL RECORD it was found that in the Senate, where the commodities clause originated, an amendment in specific terms stating that stock ownership should be held to be such prohibitory interest was defeated, and that another amendment expressly declaring that interest, direct or indirect, was intended, among other things, to embrace the prohibition of carrying a commodity owned by a corporation in which the railroad company was interested as a stockholder was offered and was likewise defeated.

The court, therefore, reached the conclusion that the very point was directly pending before the Senate of the United States and that the Senate, as a lawmaking body, had expressed itself on the record to the effect that the ownership of stock in such a corporation by the railroad should not be a prohibitive interest. On this point the court said:

"Certain it is, however, that in the legislative progress of the clause in the Senate, where the clause originated, an amendment in specific terms causing the clause to embrace stock ownership was rejected, and immediately upon such rejection an amendment expressly declaring that interest, direct or indirect, was intended, among other things, to embrace the prohibition of carrying a commodity manufactured, mined, produced, or owned by a corporation in which a railroad company was interested as a stockholder was also rejected (1906, 40 CONGRESSIONAL RECORD, pt. 7, pp. 7012–7014). And the considerations just stated, we think, completely dispose of the contention that stock ownership must have been in the mind of Congress and therefore must be treated as though embraced within the evil intended to be remedied, since it can not in reason be assumed that there is a duty to extend the meaning of a statute beyond its legal sense upon the theory that a provision which was expressly excluded was intended to be included. If it be that the mind of Congress was fixed on the transportation by a carrier of any commodity produced by a corporation in which the carrier held stock, then we think the failure to provide for such a contingency in express language gives rise to the implication that it was not the purpose to include it. At all events, in view of the far-reaching consequences of giving the statute such a construction as that contended for, as indicated by the statement taken from the answers and returns which we have previously inserted in the margin, and of the questions of constitutional power which would arise if that construction was adopted, we hold the contention of the Government not well founded."

It seems perfectly plain, not only from a reading of the entire opinion but from the direct statement of the court in the quotation last above cited, that the conclusion was reached that the Senate, the lawmaking body, had placed its own construction upon this language and that it explicitly stated by its negative action on the proposed amendments that it was not the intention of the lawmaking body to permit the ownership of stock by a railroad company in a corporation owning the commodity to exclude the railroad company from carrying such commodity in interstate commerce.

DISSENTING OPINION OF JUSTICE HARLAN

It is important also to note that Justice Harlan, whose opinions and even dissenting opinions have not only commanded universal respect but have given encouragement to many struggling hearts in their hope for the perpetuity of democratic government, did not agree with the court in the conclusions reached.

The opinion of the court from which we have been quoting covers more than 50 pages. Justice Harlan, in a dissenting opinion of less than a page, has gone to the very heart of the question involved and plainly and logically stated the reasons which controlled him in the conclusion which he reached. We quote his opinion in full:

"As these cases have been determined wholly on the construction of those parts of the Hepburn Act which are here in question, and as Congress, if it sees fit, may meet that construction by additional legislation, I deem it unnecessary to enter upon an extended discussion of the various questions arising upon the record, and will content myself simply with an expression of my nonconcurrence in the view taken by the court as to the meaning and scope of certain provisions of the act. In my judgment the act, reasonably and properly construed, according to its language, includes within its prohibitions a railroad company transporting coal, if at the time it is the owner, legally or equitably, of stock—certainly if it owns a majority or all of the stock—in the company which mined, manufactured, or produced, and then owns, the coal which is being transported by such railroad company. Any other view of the act will enable the transporting railroad company, by one device or another, to defeat altogether the purpose which Congress had in view, which was to divorce, in a real, substantial sense, production and transportation, and thereby to prevent the transporting company from doing injustice to other owners of coal."

We think it can be fairly stated that the opinion by the majority of the court in this case we have been considering was in effect modified by several subsequent decisions of the Supreme Court—at least, the dominating reason moving the court to hold that stock ownership in a corporation was not such an interest as to bring upon the railroad company the condemnation of the law is definitely explained in a subsequent opinion rendered by the court. In the case of United States *v.* Delaware, Lackawanna & Western Railroad Co. (238 U. S. 516), in the body of the opinion (pp. 526, 527), it is stated:

"But mere stock ownership by a railroad or by its stockholders in a producing company can not be used as a test by which to determine the legality of the transportation of such company's coal by the interstate carrier. For when the commodity clause was under discussion attention was called to the fact that there were a number of the anthracite roads which at that time owned stock in coal companies. An amendment was then offered which, if adopted, would have made it unlawful for any such road to transport coal belonging to such company. The amendment, however, was voted down, and in the light of that indication of congressional intent the commodity clause was construed to mean that it was not necessarily unlawful for a railroad company to transport coal belonging to a corporation in which the road held stock."

Further on in this opinion the court said:

"Taking it as a whole and bearing in mind the policy of the commodity clause to dissociate the railroad company from the transportation of property in which it is interested and that the Sherman Anti-trust Act prohibits contracts in restraint of trade, there would seem to be no doubt that this agreement violated both statutes.

"The railroad company, if it continues in the business of mining, must absolutely dissociate itself from the coal before the transportation begins. It can not retain the title, nor can it sell through an agent."

As before stated, in United States *v.* Delaware & Hudson Co., a large number of railroads were involved, all of which were engaged in one way or another, either directly or indirectly, in the mining of coal and its transportation. Practically all of these cases came into the Supreme Court again after the decision in the Delaware & Hudson case, and in every case, so far as we are able to find, the court, while

not expressly reversing itself in the Delaware & Hudson case, always found a reason for declaring these combinations illegal. The United States v. Lehigh Valley Railroad Co. (1911) (220 U. S. 257), is one of these cases. Another one is the United States v. Reading Co. (253 U. S. 26).

In the Reading Co. case, one of the railroad companies owned eleven-twelfths of the capital stock of the coal company, and the court said that such conduct fell within the condemnation of the commodities clause of the Hepburn Act and it ordered that the relation thus existing between the railroad company and the coal company should be dissolved.

It seems logical, therefore, to say that the decision in the Delaware & Hudson case, even if not modified by subsequent decisions, has at least been explained away so far as that decision tends to hold that the ownership of stock in a corporation does not constitute an interest either direct or indirect on the part of the stockholder in the business of the corporation.

The conclusion is irresistible that Secretary Mellon, under the section of the statute which we are now considering, is not qualified to hold the office of Secretary of the Treasury.

Attorneys Faust and Wilson, in their opinion, say:

"Such a construction is repugnant to common sense and would tend to eliminate the men best qualified by training and experience to administer the intricate business of the Treasury."

And the Attorney General, in his opinion, says such a construction would—

"* * * exclude from the office a great majority of the men most competent to hold and administer it efficiently, without accomplishing any good."

We are not at present concerned with the result of our conclusion. We have not been asked by the Senate whether the law is a good one or a bad one. We have not been asked to express any opinion as to whether it should be amended or absolutely repealed. The constitutionality of the act has not been questioned. These questions are all outside of the record and all outside of the duty imposed upon the committee by the Senate.

We are asked a simple question, although it may be a difficult one. The law which we are asked to construe is specifically stated in the resolution and, regardless of consequences, it becomes our duty to answer the question without considering the effect or without considering the reasonableness of the statute. Perhaps the statute should be repealed. Perhaps it should be modified. That is not for the committee to determine in the performance of the duty imposed upon it by the Senate. Nevertheless, we feel constrained to call the attention of the Senate to some historical matters and legal opinions which contradict the position taken by these eminent attorneys.

The case of A. T. Stewart, who was appointed by President Grant as Secretary of the Treasury, has a direct bearing. Mr. Stewart was nominated for that office and was formally confirmed by the Senate. The prohibiting statute was apparently not called to the attention of President Grant or the Senate. After Mr. Stewart had been confirmed the President's attention was called to this statute (the same law now under consideration in the Senate resolution). It was conceded that under this statute Mr. Stewart, on account of the business in which he was engaged, was disqualified. Thereupon President Grant sent a message to the Senate calling the attention of the Senate to the statute, and in this message he officially asked Congress to pass an amendatory act which would, in effect, exempt Mr. Stewart from its provisions.

Opposition to the change or the repeal of the statute at once developed. The President, under the circumstances, sent another message to the Senate, withdrawing the name of Mr. Stewart, who, although confirmed, had not been commissioned as Secretary. The President then submitted the name of Mr. George Boutwell to be Secretary of the Treasury, and he was later confirmed by the Senate.

A bill was introduced to change this law, but it never made any headway. Congress apparently at that time was satisfied with the law and took no action toward its modification or repeal.

This law applying to the qualifications of the Secretary of the Treasury has been in force practically from the beginning of the Government. The records of the House of Representatives show:

"Mr. Burke gave notice that he meant to bring in a clause to be added to the bill to prevent any of the persons appointed to execute the offices created by the bill from being directly or indirectly concerned in commerce, or in speculating in the public funds, under a high penalty, and being deemed guilty of a high crime or misdemeanor." (House proceedings, Monday, June 29, 1789; 1 Annals, 611.)

The next day the records show that the following occurred:

"Mr. Burke introduced his additional clause, which, after some alteration and addition proposed by Mr. Fitzsimons and others, was made a part of the bill." (House proceedings, Tuesday, June 30, 1789; 1 Annals, 615.)

The purpose of the provision contained in this law has been referred to in the Attorney General's opinions and in the opinion of the Supreme Court noted below.

In holding that certain officers of the Treasury Department, whose appointments were authorized by section 3 of the act of March 3, 1817, were subject to the prohibitions and restrictions of section 8 of the act of September 2, 1789, Attorney General Clifford made the following statement with respect to the purpose of the latter section:

"One of the principal objects of the restriction was to withdraw from the accounting officers of the Treasury every motive of private interest in the performance of their public duties and to guard the Nation from the consequences frequently to be apprehended when the business affairs of public officers are suffered to lie commingled with the financial concerns of the country.

"To prevent the public mischief within the true intent and meaning of the law it is as necessary to apply its restraining influence to the additional officers of the Treasury, authorized by the third section of the act of 1817, as it was in the first instance to those designated in the original act * * *." (4 Op. Atty. Gen. 555.)

In an opinion by Solicitor General Hoyt, approved by Secretary of the Treasury Knox, relating to the question whether there was any legal objection to the Treasurer receiving the principal and interest of certain Philippine bonds and distributing same to the holders of the securities, there is the following statement with respect to section 243 of the Revised Statutes (the section quoted in the Senate resolution):

"Section 243, Revised Statutes, forbids the Secretary of the Treasury, the Treasurer, and the Register, among other officers, to be concerned or interested directly or indirectly in the purchase or disposal of public securities of the United States or of any State. The obvious purpose of that law, as shown throughout the section, is to prohibit personal interest in such bond issues and certain other affairs and business and private emoluments or gain in the transaction of any business in the Treasury Department." (25 Op. Atty. Gen. 99.)

In ex parte Curtis (1882) (106 U. S. 371), in which the Supreme Court upheld the constitutionality of the act of Congress of August 15, 1876, prohibiting political campaign contributions between certain officers and employees of the United States, the court stated (p. 372):

"The act now in question * * * rests on the same principle as that originally passed in 1789 at the first session of the First Congress, which makes it unlawful for certain officers of the Treasury Department to engage in the business of trade or commerce, or to own a sea vessel, or to purchase public lands or other public property, or to be concerned in the purchase or disposal of the public securities of a State or of the United States * * *."

After enumerating certain other statutes of a similar character the court continued (p. 373):

"The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties and to maintain proper discipline in the public service."

With the exception of the bill which was introduced at the request of President Grant to modify this law, no attempt, so far as we are able to ascertain, has ever been made, either in Congress or out of it, to change the qualifications of the Secretary as therein set forth.

In the Federal reserve act Congress provided by law that no member of the Federal Reserve Board should be an officer in any banking institution; neither should any such member be a stockholder. In order for any person to be qualified to be a member of this board it is not sufficient that he resign official positions and his directorates on banking institutions but he must absolutely dispose of any stock he may own in any banking institution.

This act was passed in 1921. It provided in words that a member of the Federal Reserve Board should not be a stockholder in a bank. Under the reasoning of Attorneys Faust and Wilson this is "repugnant to common sense," and in the opinion of our Attorney General such a law must "exclude from the office a great majority of the men most competent to hold and administer it efficiently."

In the case of Mr. Mellon, in order to qualify himself for the office which he now holds, he not only resigned the offices which he held in banks but he disposed of all his stock in such banking institutions and at the present time he is not the owner of any bank stock.

In the same way, and in the same manner, would it not be as logical for him to dispose of his stock in business institutions as well as in banking institutions?

The objections set out in these briefs referred to claim that if the construction above given is applied to this law, competent men can not be secured for the office, and yet, during all the time that the Federal reserve act has been in effect, we have never heard any complaint on the part of anyone that the provisions of that law which prohibits a member of the board from owning stock in a bank has had the effect claimed by the Attorney General and Attorneys Faust and Wilson.

It would be just as easy for Mr. Mellon to sell his stock in the Gulf Oil Corporation or the Aluminum Co. of America as it was for him to sell his stock in the Mellon National Bank at Pittsburgh.

As late as February, 1927, Congress passed an act for the regulation of radio communications, and in this act it provided that no member of the commission therein set up for the control of the business shall be "financially interested" in the manufacture or sale of radio apparatus or in the transmission or operation of radio messages or broadcasting.

It seems that in our own day Congress, in passing laws and providing officials for the administration of the same, has done the same

as our forefathers did more than 100 years ago, and has been particular in providing that the public official shall not be financially interested in the corporations coming under his control in his official capacity.

In the radio act above referred to it is not specifically stated that a member shall not be a stockholder in the radio corporation. In the act we are asked to construe by the Senate it is not specifically stated that the Secretary of the Treasury shall not be a stockholder in a corporation engaged in trade or commerce, but it is stated that such Secretary shall not be either directly or indirectly interested in the business of trade or commerce. In the radio act we have provided that members of the commission shall not be "financially interested." The language in the radio act is not nearly so broad as in the act which we are construing, and yet the Senate is so careful in seeing that the radio act is administered in good faith that it requires nominees for places on the commission to absolutely dispose of all stock owned in the corporations to be regulated before it will confirm such nominees. There has been an instance of this kind during the present session, wherein the President sent to the Senate a nominee for a place on the Radio Commission, and before the confirmation took place the nominee was required to actually and in good faith sell stock which he owned in some of the corporations to be regulated.

It seems, therefore, that even the present Congress had not regarded such statutes as foolish or as excluding from office "a great majority of the men most competent to hold and administer it efficiently."

This law which the Senate has asked us to construe has been on the statute books for more than 100 years. If it is not going to be repealed or modified, it ought to be enforced.

LAW ENFORCEMENT

Just at the present time a great deal is being said about law enforcement. From the public press it is learned that the President of the United States has appointed, or is about to appoint, a commission to study the subject with a view of bringing about better enforcement of our laws. If we expect to enforce the law generally as to the citizens of our country, why have we not the same right to ask that our statesmen and our public officials should be weighed in the same balance? And is it not true that the ordinary citizen will not have the same respect for law generally if he understands that a plain statute is being violated by those in control of the Government itself? Why not begin our law enforcement at the top?

This idea of general law enforcement and respect for all law was recently very beautifully portrayed by a great statesman. He said:

"I have accepted this occasion for a frank statement of what I consider the dominant issue before the American people. Its solution is more vital to the preservation of our institutions than any other question before us. That is the enforcement and obedience of the laws of the United States, both Federal and State.

"I ask only that you weigh this for yourselves, and if my position is right, that you support it—not to support me, but to support something infinitely more precious—the one force that holds our civilization together—law. And I wish to discuss it as law, not as to the merits or demerits of a particular law, but all law, Federal and State, for ours is a Government of laws made by the people themselves.

"A surprising number of our people, otherwise of responsibility in the community, have drifted into the extraordinary notion that laws are made for those who choose to obey them. And, in addition, our law-enforcement machinery is suffering from many infirmities arising out of its technicalities, its circumlocutions, its involved procedures, and too often, I regret, from inefficient and delinquent officials * * *.

"Life and property are relatively more unsafe than in any other civilized country in the world. In spite of all this we have reason to pride ourselves on our institutions and the high moral instincts of the great majority of our people. No one will assert that such crimes would be committed if we had even a normal respect for law and if the laws of our country were properly enforced. * * *

"What we are facing to-day is something far larger and more fundamental—the possibility that respect for law as law is fading from the sensibilities of our people. Whatever the value of any law may be, the enforcement of that law written in plain terms upon our statute books is not, in my mind, a debatable question. Law should be observed and must be enforced until it is repealed by the proper processes of our democracy. The duty to enforce the laws rests upon every public official and the duty to obey it rests upon every citizen.

"No individual has the right to determine what law shall be obeyed and what law shall not be enforced. If a law is wrong, its rigid enforcement is the surest guaranty of its repeal. If it is right, its enforcement is the quickest method of compelling respect for it. I have seen statements published within a few days encouraging citizens to defy a law because that particular journal did not approve of the law itself. I leave comment on such an attitude to any citizens with a sense of responsibility to his country.

"In my position with my obligations, there can be no argument on these points. * * *

"It is unnecessary for me to argue the fact that the very essence of freedom is obedience to law; that liberty itself has but one foundation, and that is in the law." (President Hoover, in an address before the Associated Press, New York City, April 22, 1929.)

This beautiful sentiment so eloquently expressed should be our guiding star. But it is not enough to state our ideas in beautiful generalities. We must practice what we preach. It is not sufficient that those at the top should remind the common citizen of his duty but the high official, the appointing power, must obey the same law for which he demands obedience of the citizen. When the law is strictly and honestly obeyed and followed by the official, the respect of the common citizen for all law will be greatly increased. If corruption in official life had not been so universal during the last few years, or if such crimes when exposed had been publicly denounced by high officials in our Government, this disrespect for law charged by the President to be almost universal would have been much lessened if not entirely eliminated.

Most of us have a very high admiration for Alexander Hamilton, the first Secretary of the Treasury. His ability and his statesmanship are lauded and praised by his countrymen more than a century after he has passed away, and yet this great statesman held the office of Secretary of the Treasury under President Washington while this particular law, now before us for consideration, was on the statute books. It seemed, in that day, that there was no danger such as is pointed out in the briefs of the Attorney General and Messrs. Faust and Wilson.

When President Grant appointed a Secretary of the Treasury who was disqualified under this act, he formally withdrew the nomination and sent in another name.

We feel, therefore, that the danger to the country, if Mr. Mellon be disqualified from holding the office of Secretary of the Treasury, has been greatly exaggerated. If, however, the country has reached the condition where only men owning millions of stock in business corporations are qualified to hold the office of Secretary of the Treasury, then instead of trying to nullify the law and set a precedent before the people, we should amend or repeal it so that at least we could truthfully say that those whose duty it is to enforce the law are not themselves looking for technical means by which the law can be nullified.

There only remains for our consideration in connection with the resolution before the committee, the question involved in section 63 of title 26 of the Code of Laws. This section reads as follows:

"Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than $500 nor more than $5,000. The provisions of this section shall apply to internal-revenue agents as fully as to internal-revenue officers."

Under the stipulated facts before the committee Mr. Mellon at one time owned stock in the A. Overholt & Co., a corporation engaged in the manufacture and distillation of spirituous liquors. Before he became Secretary of the Treasury this corporation was put in liquidation in the hands of a trustee. The trustee had full discretion as to the liquidation of the assets. In accordance with this trusteeship the company has been fully liquidated and the former owners, including Secretary Mellon, have been paid for their interests, and Secretary Mellon has at this time no further connection with or interest in that enterprise or any other enterprise of a similar nature.

Although the corporation went out of business so far as the manufacture, production, rectification, or redistillation of distilled spirits was concerned, the complete liquidation of the assets of the corporation did not take place until after Mr. Mellon became Secretary of the Treasury. We do not believe there was any violation of this section in the appointment of Mr. Mellon as Secretary of the Treasury or in his holding such office. It will be noted that at the time he went into office, and since he has held the office, this corporation has not been engaged in the "production, rectification, or redistillation of distilled spirits," and therefore there has been no violation of this law.

CONCLUSION

In conclusion, therefore, we answer the questions submitted by the Senate specifically as follows:

First. The head of any executive department of the Government except the Postmaster General may legally hold office as such after the expiration of the term of the President by whom he was appointed.

Second. Secretary Mellon, under section 243 of title 5 of the Code of Laws of the United States, is disqualified from holding the office of Secretary of the Treasury.

Third. The appointment of Mr. Mellon as Secretary of the Treasury and his holding such office does not constitute a violation of section 63 of title 26 of the Code of Laws of the United States.

G. W. NORRIS.
T. H. CARAWAY.
T. J. WALSH.
JOHN J. BLAINE.

[S. Rept. No. 7, pt. 3, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. BLAINE, from the Committee on the Judiciary, submitted the following additional views (pursuant to S. Res. 2):

1. I concur in the opinion of the committee to the effect that the head of a department may legally hold office as such after the expiration of the term of the President by whom he was appointed.

2. I concur in the opinion of the minority to the effect that the prohibition contained in section 243, title 5, of the United States Code, applies to a Secretary of the Treasury who owns a "substantial" amount of the stock of corporations "carrying on the business of trade or commerce" or who, in connection with members of his family and close business associates, has a substantial control of the operations of any such corporations.

3. A Secretary of the Treasury who owns, in whole or in part, a whisky distillery, but which distillery is not engaged in the production, rectification, or redistillation of distilled spirits, does not come wthin the prohibition of section 63 of title 26 of the United States Code.

However, section 243 is offended against if a Secretary of the Treasury is at any time during his term of office concerned or interested, directly or indirectly, in the disposal of liquor stock in trade or commerce or in the proceeds or profits of the business involved in the sale of whisky.

The Attorney General of the United States, William D. Mitchell, states "that at one time he (Andrew W. Mellon) held a partnership interest in a firm (A. Overholt & Co.) which distilled whisky," and "before March 4, 1921, the entire property of the firm was conveyed to a trustee under an irrevocable trust with full authority in the trustee to dispose of the property free from any control of those who were members of the partnership, but without power to operate the distillery," and that between March 4, 1921, and October 2, 1928, the whisky so held was sold.

It is not in dispute that Mr. Mellon was a beneficiary under such trust agreement and received his share of the proceeds and profits from the sale of the whisky while he was Secretary of the Treasury. It is presumed that the whisky was sold lawfully, and under the national prohibition act it could only have been sold as a commodity in trade and commerce.

The trustee, while having absolute control over the sale of the whisky, acted in no other capacity than as an agent for Mr. Mellon and his copartners, while Mr. Mellon retained his beneficial interest in such whisky and received the proceeds and profits therefrom, and such beneficial interest was a substantial amount.

Under these facts the Secretary of the Treasury was directly interested in carrying on the business of trade or commerce by a trustee, who, through the trust agreement, was substituted as his agent.

Clearly such transaction offends against said section 243.

The question arises, therefore, whether or not the Secretary of the Treasury could by any such device give himself an "immunity bath" by substituting an agent to act for him, though retaining the beneficial interest and receiving the proceeds and profits. The act of the agent (in this case the trustee) is the act of the principal. That is axiomatic, and it would not seem necessary to go into further discussion of that question in demonstrating that the Secretary of the Treasury stands as an offender against section 243.

4. Section 243 is not a self-operating law. A person who offends against such law "shall * * * forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office and forever thereafter be incapable of holding any office under the United States." However, in this case the President has the power to remove Mr. Mellon from office by the simple process of appointing another person to such office.

The President also has the power to direct the Attorney General's department to bring an action against Mr. Mellon for the collection of the forfeiture provided by section 243. In such case his conviction would make him incapable of holding the office even if the President were delinquent in failing to name his successor.

The responsibility is solely upon the President to determine whether or not he will permit technicalities, the circumlocutions of the law-enforcement machinery, and its involved procedures (which the President has so emphatically denounced) to control his actions in this case and thereby defeat the objects and purposes of the law.

JOHN J. BLAINE.

[S. Rept. No. 7, pt. 4, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. WALSH of Montana, from the Committee on the Judiciary, submitted the following individual views (pursuant to S. Res. 2):

That the Senate may be advised more fully of the proceedings had before the Committee on the Judiciary, acting under Senate Resolution 2, of the Seventy-first Congress, special session, it is apprised:

(1) That there was presented to the committee a letter from Andrew W. Mellon, Secretary of the Treasury, a copy of which is herewith attached, marked "Exhibit A."

(2) It was represented to the committee that one George D. Haskell brought suit against the Aluminum Co. of America and the representative of the Duke estate, alleging a combination between the said company and one James B. Duke, or a company represented by him, for the production of aluminum in a plant to be erected on or near the Saguenay River in Canada, where Duke had developed or was developing a large water-power plant, the electricity to be generated by it to be used in the aluminum plant. In that suit the deposition of Mr. Mellon was taken, copy of which is hereto attached, marked "Exhibit B." From the deposition it appeared that the enterprise, which contemplated the issuance of stock to the amount of some hundreds of millions of dollars, was the subject of conference between him, his brother, Mr. R. B. Mellon, and Mr. Arthur Davis, president of the company, and that by arrangement Duke and an associate, by the name of Allen, and Davis, had dinner with Andrew W. Mellon at his apartment in the city of Washington, in which the proposal to unite in the enterprise was under consideration for some hours. Later A. W. Mellon joined a party which visited the plant in Canada. In the deposition Mr. Mellon testified as follows, referring to the Aluminum Co. of America:

"A. Yes. I should say for over 20 years at least I have not been in touch with the affairs of the business other than occasionally seeing Davis when something would come up in conversation. But I was not generally consulted. Of course, if there was anything of importance in the way of policy or something that way I think I usually was. I am talking now of in the last 20 years" (pp. 5–6).

(3) In a suit brought in the Court of Claims of the United States by the administratrix of the estate of John H. Murphy against the United States, claiming that Murphy had a contract with the United States through Hon. John W. Weeks, Secretary of War, by which the said Murphy was commissioned to make or undertake to make a sale of certain cars belonging to the United States, then in Europe, the deposition of Peter F. Tague, formerly a Member of Congress from the tenth Massachusetts district, being taken, he testified concerning conversations between Secretary Weeks and himself and Mr. Murphy, in the course of which the witness testified, among other things, as follows:

"120. Question. What did Mr. Murphy say, if anything?

"Answer. Mr. Murphy—you mean at this interview in September?

"121. Question. The second interview in September.

"Answer. He told Secretary Weeks of the amount of work that he had put in in trying to sell these cars, of how he had been to almost every country in Europe, and that the men in Europe, his associates, had been around Europe trying to sell these cars, and that they had been unable to do so, and that he was positive this concern couldn't sell these cars in France. He then asked Secretary Weeks to tell him, if it wasn't a breach of confidence, to whom the option had been given, inasmuch as he had other people in New York peddling these cars and they were any one's to sell. He told him. I don't remember exactly the words, but in substance he said, 'Now, John, you've got me in an embarrassing position. I didn't intend to tell, but I have given this option to Secretary Mellon, for the Standard Pressed Steel Car Co.' And he said that they had a large organization and that if any one could sell these cars they could. Mr. Murphy then emphasized that he didn't believe they could sell them. He then said, 'Let this matter lay a little longer, and you come back to see me; and if they haven't sold them I will give you an opportunity to sell the cars.'

"122. Question. Did Mr. Murphy tell the Secretary where he could sell them?

"Answer. He told him he could sell them in Poland.

"123. Question. Does that exhaust your recollection of that interview?

"Answer. I believe Mr. Murphy told the Secretary at that interview that Poland had already bought some of these cars and had paid—I forget the price—but had paid a large price for them; that they were using the cars, and that they could take these cars over with practically no alteration and use them immediately, and that they needed the cars; and that he believed that an arrangement could be made with Poland so that they would be in a position to finance the sale.

"124. Question. Did the Secretary say anything about what he would do with regard to an investigation of the Polish situation?

"Answer. Yes; he said he wished to discuss with the State Department or the Treasury Department the condition of their finances in relation to the last sale of cars, and that he wanted to be in position to know their financial standing and whether they would be competent to take on this" (pp. 28–29).

The action was brought by Murphy during his lifetime, and his administratrix substituted after his death. His deposition being taken, he testified, among other things, as follows:

"157. Question. Will you state the conversation that took place between you at that time?

"Answer. I told the Secretary that I had received a proposition for these cars for Poland. I told him that the price offered me was $1,200 by Major de Grass, of the General Equipment Co., of New York City. I told him that I found the cars were being freely offered for sale. I meant by that, by word of mouth freely advertised. And I told him if such was the case that I knew I could sell these cars. I told him that

Poland was the only country in the world, in my opinion, that would buy the cars. I told him that in the other countries, where changes were required, the cost was all the way from $500 to $1,300, and that the freight, cost of erection, and so on, made it practically prohibitive; that these cars could not be sold in other countries unless sold at a greatly reduced rate. I told him that Poland needed the cars. I told him that they had Baldwin locomotives with Baldwin air-brake equipment. I told him no changes had to be made. I told him they had their own erection yards in Danzig, where they had 4,600 cars from the United States of America and had paid $1,800 previously. I told him that in my opinion Poland was absolutely the only country where they could expect to sell these cars. I said, 'Now, Senator, I would like the privilege of going over to try to sell these cars for you.' He said, 'Now, John, you have got me in a very embarrassing position.' He said, 'I didn't intend to tell you the name of the man I have given the option to, but now I will tell you.' He told me the man was Mr. Mellon, and that 'Mr. Mellon has a very powerful'—no; I asked him, 'Senator, would you mind telling me what countries he has got the option for?' He says, 'France.' I says, 'He will never sell these cars in France. We have gone over France with a fine-tooth comb, and not only France but her colonies.' I says, 'France already has 27,000 more cars than she needs. You can see them on the railroad tracks all the way from Paris to Sofia.' I says, 'He will never sell these cars to France.' He says, 'John, that might be, but I must keep my word with him,' and he said, 'You come back and see me again.' So I left the Secretary, and I believe I returned again to New York and Boston.

"177. Question. Does that comprise what you recall of that conversation?

"Answer. Practically. I do not recall at this time whether it was at this conference or at the conference of October 10 that the Secretary told me that Mr. Mellon had failed in his efforts to sell the cars to France" (pp. 66, 69).

(4) A Washington dispatch appearing in the Journal of Commerce of date August 29, 1928, was read to the committee. It gave the information that the Gulf Refining Co. had been awarded contracts to supply the requirements of the Shipping Board Emergency Fleet Corporation at all Gulf and Atlantic ports with fuel oil, the contract calling for deliveries amounting to approximately 8,000,000 barrels annually. Copy of the article is herewith attached, marked "Exhibit C."

EXHIBIT A

TREASURY DEPARTMENT,
Washington, April 18, 1929.

DEAR SENATOR REED: I understand that the Senate Judiciary Committee wishes to know whether I am now concerned in carrying on "trade or commerce" in violation of the law which makes such action a high misdemeanor, and that the committee has asked you to meet with it at its session to-morrow morning.

Before I took office as Secretary of the Treasury, in March, 1921, I resigned every office that I then held in any corporation and resigned all my directorates in such corporations, and I have not since that time, nor am I now, a director or officer in any corporation for profit. I am a trustee or director of the University of Pittsburgh, the Carnegie Institute, and of several hospitals and charitable corporations, none of which, however, is engaged in trade or commerce or in any business conducted for profit.

Before I became Secretary of the Treasury I sold every share of stock which I owned in any national bank, trust company, or other banking institution, and I have not since then owned, nor do I now own, any stock in such corporations. I owned then and I now own a substantial amount of stock in the Gulf Oil Corporation, the Aluminum Co. of America, the Standard Steel Car Co., and other business corporations, but in every case my holding is very much less than a majority of the voting stock of such company. As far as these companies are concerned, my active connection with them was severed in 1921 as completely as if I had died at that time. I have not concerned myself with their affairs, and I have not endeavored to control or dictate their operations in any way. It should be needless to add that I have in no way taken part in the adjudication or settlement of any Federal taxes upon such companies, and I have consistently refrained even from inquiring about their tax affairs.

Senate Resolution 2 mentions also the prohibition against an internal-revenue officer being interested in the production of distilled spirits, as if to imply that there was some question of my having violated that statute. As you know, I had an interest in A. Overholt & Co., but that company discontinued the manufacture of distilled spirits several years before the prohibition amendment was adopted. The company was put in liquidation in the hands of a trustee before I became Secretary of the Treasury, the trustee having full discretion as to the liquidation of the assets. This company has been fully liquidated, the former owners, including myself, have been paid for their interests, and I have no further connection or interest in that enterprise or any other of that nature.

All the foregoing facts have been so often stated publicly that I had not supposed there was the slightest question about them in the minds of any person interested, but I should be glad to have you explain the situation to any member of the committee who is not familiar with them.

Yours very truly,

A. W. MELLON.

Hon. DAVID A. REED,
United States Senate.

EXHIBIT B

GEORGE D. HASKELL *v.* WILLIAM R. PERKINS ET AL., EXECUTORS OF THE LAST WILL AND TESTAMENT OF JAMES B. DUKE, DECEASED

NEW YORK, *July 2, 1928.*

Met pursuant to agreement, in room 640, Hotel Biltmore.

Present: The notary, Mr. Whipple, Mr. Park, and Mr. McClennen.

The taking of this deposition was noticed by the plaintiff for the city of Washington, D. C., but by agreement of counsel, for their mutual convenience, finding Mr. Mellon in New York, it is taken in New York before Rowland W. Philips as commissioner.

Andrew W. Mellon, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. WHIPPLE:

Q. Will you state your full name, Mr. Mellon?—A. Andrew William Mellon.

Q. And your residence?—A. Pittsburgh, Pa.

Q. I assume the court will take judicial notice that you are now and have been for several years Secretary of the Treasury and residing temporarily in Washington.—A. Since 1921, which is about seven years and four months.

Q. And you have been continuously Secretary of the Treasury since then?—A. Since that time.

Q. Are you familiar with a corporation known as the Aluminum Co. of America?—A. I am.

Q. You know of it as a corporation organized and having its principal office at Pittsburgh, Pa.?—A. I do.

Q. How long have you been interested in the corporation?—A. Almost since the inception of the corporation; I do not recall just how many years ago that is—what year I became interested in it.

Q. Was your brother also interested—Mr. R. B. Mellon?—A. Yes.

Q. Equally with you?—A. Yes.

Q. And has been from the beginning?—A. Yes.

Q. Were you at any time a director of the corporation?—A. I was.

Q. Approximately between what dates?—A. From the time I speak of until I went to Washington or shortly before the time I went to Washington, in March, 1921. I then resigned.

Q. Was your brother a director covering the same period of time?—A. Yes.

Q. And he did not resign but has continued since as a director?—A. He has continued since.

Q. Have your financial relations with your brother during this whole period of time been very close and intimate?—A. Yes.

Q. I have seen it stated and I will ask you to verify it that in all business matters in which you are interested he also is equally interested, or in practically all.—A. No; but in a great many investments and properties that we have, we have them together, but not all.

Q. But you acquired equal interests at the same time in the Aluminum Co. of America?—A. Yes.

Q. And have continuously held equal interests since that time? I limit it up to 1925.—A. Yes.

Mr. MCCLENNEN. Mr. Whipple, as we know, but to avoid any misunderstanding later, when you say the Aluminum Co. of America you mean whatever its name was. At the beginning it was the Pittsburgh Reduction Co.

The WITNESS. The Pittsburgh Reduction Co.

Mr. WHIPPLE. Yes.

The WITNESS. The same business.

Mr. WHIPPLE. It may be understood that in speaking of the Aluminum Co. of America I refer to the present organization and also that or those which it succeeded—I mean the original company.

Mr. MCCLENNEN. It was merely a change in name?

Mr. WHIPPLE. Yes.

Q. Do you object to stating the stock holdings of your brother and yourself in, say, January, 1925, in the Aluminum Co. of America?—A. I do not recall the exact number of shares. Generally speaking, it was about 15 per cent; something over, but thereabouts.

Q. That is your combined holdings, or each?—A. No; the combined holdings were twice that.

Q. Yes; I was not quite sure which you meant, whether it was that or not. Did you meet at about the time you went into it the president of the corporation, Arthur V. Davis?—A. Well, he was not president at the beginning. Captain Hunt—Alfred B. Hunt—was then president.

Q. Was Mr. Davis connected with it when you became interested in it?—A. He was.

Q. And you have known him ever since?—A. Ever since.

Q. Have your business relations with him been what might be called close or intimate?—A. Yes.

Q. Was this one of the corporations in which you felt some personal interest and had some personal knowledge of its affairs?—A. In the early days I was closely in touch with it, but later on I was very much occupied, even before I went to Washington, with other undertakings, and so I did not keep an active connection with the company in the sense of knowing all the trades that were made or the developments. For a good many years I sort of dropped out, because I was too much absorbed with other investments.

Q. It would be fair to say that you gave up that attention to what might be called the details?—A. Yes.

Q. That you had been able to give attention to before?—A. Yes. I should say for over 20 years at least I have not been in touch with the affairs of the business other than occasionally seeing Davis when something would come up in conversation. But I was not generally consulted. Of course, if there was anything of importance in the way of policy or something that way I think I usually was. I am talking now of in the last 20 years.

Q. Did your brother continue, so far as you observed, in active participation in the affairs of the company or care of details?—A. No. To an extent he was familiar with what was going on, but he was not at all active in the affairs of the company.

Q. But he continued as director?—A. He continued as director.

Q. Can you remember who the directors were other than your brother at the time you resigned?—A. Well, I remember some of them.

Q. There was Mr. Davis, of course?—A. There was Mr. Davis, and I think his brother was also a director at that time; and there was a man who has now retired and is living up at Williamstown—what was his name?

Mr. McCLENNEN. Was it Mr. Laurie?

The WITNESS. Mr. Laurie; and there was Gillespie, D. L. Gillespie. That is all I can think of just now.

Q. Did you know Mr. Gillespie pretty well, and Mr. Laurie?—A. Oh, yes.

Q. Had you other business connections or contacts with them?—A. With Mr. Gillespie some other business contacts and investments, but not with Mr. Laurie other than the aluminum business.

Q. Did you at some time meet the late James B. Duke?—A. I met him, I think it was, in 1922, in Washington. I had under consideration a man from Winston-Salem, Mr. Blair, for the position of Commissioner of Internal Revenue. He had been recommended and one of the references or one of the parties who it was stated to me was acquainted with Mr. Blair was Mr. Duke. I was not acquainted with Mr. Duke but I asked over the telephone or in some way, perhaps I wrote to him, I do not recall, about Mr. Blair. He said that he was going to New York and would stop in Washington to see me, which he did, and he brought with him a man who he said knew Mr. Blair better than he did, and that man died on the way to Washington, dropped dead on the train, and he had quite a time in Washington when he got there. That was all in relation to Mr. Blair. And the next time and the only other time——

Q. If you will pardon me, as to that, perhaps you have answered it. You had no conversation with Mr. Duke at that time except with reference to Mr. Blair?—A. No.

Q. Then the next time you saw him?—A. The next time was at my apartment in Washington, when Mr. Duke and Mr. Allen with him, and Mr. Davis came to dinner. Mr. Davis had made the engagement, had spoken to me of Mr. Duke, and he wanted to make an arrangement for Mr. Duke to meet me, and I suggested that they come to dinner.

Q. In the meantime, I take it, that you had not talked with Mr. Duke at all?—A. No.

Q. And had not met him?—A. No.

Q. And I suppose you then remembered him as the person who dropped in at Washington and spoke about Mr. Blair?—A. Oh, yes.

Q. Do you know a man by the name of George G. Allen?—A. Yes.

Q. When did you first meet him?—A. He came with Mr. Duke to the dinner I speak of. That is the first meeting.

Q. Had you ever heard of him before that?—A. I do not think so. I do not recall it.

Q. You say that Mr. Davis arranged the meeting?—A. Yes.

Q. Do you know that at some time later a merger was negotiated and arranged between a corporation known as the Quebec Aluminum Co. (Ltd.) and the Aluminum Co. of America?—A. You mean before this dinner?

Q. No; after this interview.—A. I knew afterwards. I do not just recall the name of the company.

Q. Well, I am reminded that it is the Canadian Manufacturing & Development Co., although the correspondence or negotiations that I refer to were on the part of Mr. Davis on the one side and Mr. Duke on the other, representing, respectively, the Aluminum Co. of America and the Quebec Development Co.—A. Well, I knew that Mr. Davis had been in negotiation with Mr. Duke at the time of this dinner. It was on account of Mr. Duke's interests in Canada, the water-power interests, and, as I understood, he wanted to connect up with the Aluminum Co. and negotiate an alliance there so that he would have a market for his water power.

Q. You knew that before the meeting?—A. Yes.

Q. From whom did you learn it?—A. Mr. Davis.

Q. How long before the dinner at Washington did you learn it?—A. Not a very great while; I suppose a month or two or something like that; not very distant.

Q. How did you learn it—I mean was it in writing or telephone or personal interview?—A. No; I was just thinking where; I think it was when I was out in Pittsburgh that Davis spoke to me about it.

Q. Can you fix approximately the date when you were out in Pittsburgh?—A. No; I could not do that.

Q. But it was within two months prior to the dinner?—A. My recollection is it was not a long time before it. It may have been several months, not very long, though.

Q. Well, possibly it would assist you somewhat if I called your attention to the fact that there is in existence and has been put in evidence a telegram dated January 13, 1925, about the dinner.—A. Yes.

Q. And to refresh your recollection perhaps or to assist your memory I will read it to you.—A. Yes.

Q. It is a telegram from Mr. Davis to Mr. Allen, this same Allen I spoke of a moment ago. It reads as follows:

"Mr. Mellon has just telephoned me to ask if Mr. Duke will take dinner with him on Friday night and says that he will arrange the dinner at whatever time fits in with the arrival of the train. Mr. Mellon added that he would be alone at dinner, so that we can come direct from the train to his house. It was arranged that I was to let Mr. Mellon know what time we would arrive. Can you figure on the train schedule a little and I will telephone you the first thing to-morrow morning from New York, so that I can let Mr. Mellon know promptly as possible."

Now, that is a telegram which was put in evidence as Exhibit 105. You think that refers to the dinner that you have spoken of?—A. Oh, yes; undoubtedly.

Q. That would fix it as Friday after January 13, 1925?—A. Yes.

Q. Which is——

Mr. McCLENNEN. January 16, I think.

Q. Which we will accept for the moment as on January 16, the exact date being not of the slightest consequence.—A. Yes.

Q. We will speak of it, then, as the January 16 dinner. Now, you said a moment ago that it was your best memory that you had heard of what I may speak of as negotiations perhaps a couple of months before that.—A. Yes.

Q. And does that accord with your memory?—A. Yes.

Q. I may state perhaps for your information that Mr. Davis in his testimony has fixed the date when those negotiations opened as about November 6, which would be just 2 months and 10 days before the dinner.—A. Yes.

Q. Then, I will ask you, did Mr. Davis in his first talk speak of negotiations as having been opened or as something that he was going to look into?—A. It was rather tentative, or, rather, that Mr. Duke was desirous of making an alliance with the Aluminum Co. on account of this water power.

Q. Did he say that he had seen Duke; do you remember?—A. Well, I would infer that he had seen Duke; he had been negotiating with him.

Q. And this occasion when the first information was given you, you think was at Pittsburgh?—A. I would not be certain. It may have been. I just have a recollection of seeing Davis at Pittsburgh and it is likely that that is when. It might possibly have been by telephone. I think likely the arrangement for the dinner was over the telephone.

Q. Yes; the arrangement for the dinner; but you think before that at some interview at Pittsburgh Mr. Davis had mentioned something to you about it?—A. Yes; I think so.

Q. And then was the first you learned about the project?—A. Yes.

Q. Had you ever heard before that of Duke's having a water power?—A. I do not recall that I had.

Q. Or that he had any notion or desire to join forces with the Aluminum Co. in any way?—A. Not before the period I speak of.

Q. That was your first information about it?—A. Yes.

Q. Or that Mr. Davis had desired to get in touch with Mr. Duke?—A. No; I had not.

Q. Nothing of that sort?—A. I had not any information on that score.

Q. Appreciating it was a long time ago and that you have had many things to pass through your mind since, I still would like to have you state as fully as you can that first or initial conversation with Mr. Davis in which he gave you this information.—A. It has pretty nearly been covered by what I have said already. I do not know of anything further than that; that Duke had this large water power and wanted to negotiate with the Aluminum Co.

Q. Did he say anything about Mr. Duke's having organized or having in mind to organize an aluminum company?—A. No.

Q. Did you hear at some time that Mr. Duke had caused to be organized a corporation known as the Quebec Development Co. (Ltd.)?—A. No; I had no knowledge of that.

Q. You think Mr. Davis did not tell you that he either intended to or had at some time——A. Not to my recollection.

Q. Do you remember whether you said anything at this initial interview at which Davis told you what you say Duke wanted?—

A. Well, it was something that was not very definite, very tangible at all; there was no plan or arrangement suggested. It was just in general, that they had had conversation on the subject.

Q. Did he mention Allen at that time?—A. I do not recall. He may have, but I do not recall it.

Q. Or any engineers that had conferred on the subject?—A. No.

Q. But you inferred that he had himself had a talk with Duke personally?—A. Yes.

Q. Did he at that time say anything about your seeing Duke?—A. No; I do not think so. I think that came afterwards.

Q. Did he keep you informed after that and up to January, 1925, of what was going on between himself and Duke?—A. No; I have not——

Q. What is your recollection of the next talk or the next thing you heard?—A. I think the next communication from Mr. Davis was regarding a meeting with Mr. Duke.

Q. Have you any letters on the subject?—A. No.

Q. Did you receive any?—A. No.

Q. Were you in the habit of keeping such letters as came to you from Mr. Davis?—A. Oh, yes; all my letters go in the files.

Q. And have you caused your files to be examined?—A. Yes.

Q. To see if there were any on this subject?—A. On the occasion that this question of having my testimony taken, as to the date of that dinner, I had my secretary then look up to see if he had anything that showed the date of the dinner, and there was something, I have forgotten exactly, that gave the date of that dinner, but that was the only thing.

Q. Did you ask him to examine to see whether there were letters from Mr. Davis or copies of letters you sent to him?—A. Well, he naturally would have found them. I asked him to see if he could locate that date. But my own recollection is that I never—I do not recall receiving any letters from Davis during all this time I have been in Washington; although I have had communications from Davis which have been usually on the telephone, and he has been in Washington and I have seen him when I was at Pittsburgh.

But there were other matters; for instance, we got into a controversy in the last campaign, over the tariff question. Mr. Davis, who was the Democratic candidate, attacked me or criticized me in the position I held in that in that position I used my influence to obtain high tariff rates for the company, and I had to answer some of those things. Mr. Davis and Mr. Hunt and some of the others came down to Washington on that. That was one thing. There have been subjects of that nature that have brought the contact, but I do not just recall of any letters between us.

Q. In the subpœna that was served you were asked to bring any letters or copies of letters?—A. Yes.

Q. And I had hoped and was assured by Mr. Bond, the Assistant Secretary of the Treasury, that you would have some one make diligent search in your files to see if there were any such letters. Do you really know whether that has been done?—A. That has been done by my secretary.

Q. By whom?—A. My secretary.

Q. What is his name?—A. Mr. Sixsmith.

Q. Did he report to you that he had made a careful examination?—A. Yes.

Q. Did he say whether he found any letters from Mr. Davis concerning this matter?—A. He found only something that indicated that date of the dinner.

Q. What was that?—A. I have forgotten; it was something. I won't be sure, but I think it was an answer to a request for an appointment out of Washington, and I said that I had an engagement and mentioned this dinner. Now I think that is it. I would not be sure. He showed it to me but——

Q. Do you know when he made a search of the files?—A. At the time this question came up of having my testimony taken.

Q. You say that when letters come they are put in the files. Did you have any files with regard to the Aluminum Co. or Mr. Davis?—A. Yes; there was the file that had matters in connection—all this relating to the statement that was made on the question of the tariff and all that—those are all in that file.

Q. What is the earliest date of any communication in the file; do you remember?—A. I could not say.

Q. Did you receive any letters on the subject from your brother?—A. No.

Q. Any letter or letters?—A. No.

Q. Did you have any consultations with him or conferences or conversations with him; I mean prior to this dinner?—A. No; other than I think he was present at the time Davis spoke to me in Pittsburgh.

Q. Had he mentioned it before then?—A. No.

Q. Oh, he was present at the time?—A. Yes.

Q. What did your brother say to Mr. Davis in Pittsburgh when he spoke of Duke's proposition, or if I may call it, desire?—A. I do not recall any expression used.

Q. Did you make any remark about it?—A. I do not recall it exactly. You see, it was not anything that was at all before us to decide in any way on anything; there was nothing definite spoken of.

Q. Did Davis make any comment about it; did he say he was going to follow it up or anything of that sort?—A. I have no doubt he did.

Q. But you can not remember anything else that he said?—A. I do not recall the conversation very clearly. I recall the occasion and have an impression about it.

Q. Did he tell you about how much water power Duke had?—A. I think he did.

Q. And what is your memory about it in a general way?—A. Well, I knew it was a very large power.

Q. Did Davis tell you that?—A. Who?

Q. Davis.—A. Oh, yes.

Q. Well, what did he tell you about the water power? Perhaps that is a better way to put it.—A. Well——

Q. Did he tell you where it was?—A. Yes; and that it was a very large potential power that Mr. Duke had acquired. I think I recall he said that Duke had been working on this since 1911. I just have that in my mind.

Q. Did he speak of Price or the Prices in connection with it?—A. No; Mr. Davis did not speak of Mr. Price as far as I can recall. He may have. I remember that Mr. Duke spoke of Price, of the Prices.

Q. Did Mr. Davis tell you to what extent Duke had proceeded with the development?—A. Yes; I think he did in a general way; he spoke of this power development.

Q. Did he tell you where it was?—A. Yes; on the Saguenay River.

Q. Did he speak of the upper and lower development?—A. No; it was just a general reference to the project and the scope of it.

Q. Can you remember how he happened to mention it; what the occasion was of the meeting?—A. In Pittsburgh?

Q. Yes.—A. Well, it was just an occasion when he brought this matter up.

Q. I mean had you dropped in to see him when you were there or had he dropped in to see you and your brother?—A. I think it was rather that he is a director in our bank, and I make my headquarters in the bank, and he was there.

Q. Was it at an interview that had been arranged or one that was accidental?—A. Well, it had not been arranged. I happened to be in Pittsburgh and Mr. Davis usually came to see me. I do not go very often to Pittsburgh.

Q. And your brother was also there, you, think, rather accidentally?—A. Yes.

Q. Were any other directors of the Aluminum Co. there?—A. No; not to my memory.

Q. Did Mr. Davis say whether he had talked to other directors who were there?—A. It is possible that Roy Hunt was there, because he is also a director in the Mellon National Bank. He may have been present at that conversation. I do not just recall.

Q. But it was not a meeting of the directors of the bank?—A. There is a daily meeting there, and Davis comes to that daily meeting, and that is usually the time I see him.

Q. So you saw him practically every day you were there?—A. I don't think I was there more than a day at the time. Since I have been in Washington I do not think I have been in Pittsburgh more than—well, I have been there over the week end, but not to be at the bank.

Q. Then it would be true that being there only one day, if that was all, he saw you every day that you were there?—A. Yes.

Q. But on this single occasion. Now, can you tell us what you said, what the conversation was which led up to the dinner, if that was the next time that the thing was called to your attention?—A. Well, I recall that he said that Mr. Duke would like to come to Washington and talk this business over in Washington..

Q. With you?—A. Mr. Duke had said that he would.

Q. He would like to talk it over with you?—A. Yes; and I said that I would be glad to have him come to dinner and discuss it.

Q. Was that all?—A. I think that was all.

Q. What business did he say Duke wanted to talk over?—A. His water-power business.

Q. That is a combination or merger or something?—A. Yes; whatever it might lead to.

Q. And you remember nothing more of the conversation that occurred before the dinner?—A. No; that was substantially all.

Q. Who were present at the dinner?—A. Mr. Duke, Mr. Allen, Mr. Davis, and myself; the four of us.

Q. Was not your brother there?—A. No.

Q. No other director was there?—A. No.

Q. How long was the conversation on this matter on account of which they were there?—A. They came about dinner time. There was no conversation, as I recollect, immediately before dinner. We had dinner and sat up quite late; I should say we were there—yes—until about 1 o'clock. I think there is a 1.30 train that Duke's car was to go back to New York on, and we sat there until, my recollection is, about the time that they were to return.

Q. Did Mr. Duke bring Mr. Davis down in his private car; did they come together?—A. Well, I suppose so. I do not know.

Q. At any rate they went away together, the three of them?—A. They went away together.

Q. Can you tell us what was said by the different people on this subject during that interview?—A. The conversation was principally, almost wholly, on the part of Mr. Duke with me. I do not recall excepting what Mr. Davis might join in on something, or something casual, but the conversation was chiefly between Mr. Duke and myself.

Q. Will you tell us as best you can what was said by Mr. Duke and what was said by you?—A. Well, I have tried to refresh my memory on what was said. You see, it is difficult to remember clearly that length of time, when there have been so many other things all the time in my mind. But he described the water power and his acquisition of it and spoke a great deal of the paper industry. He seemed to want to interest me in that feature of it, the great possibilities of it, the great area that there was in paper and this power business and the Duke-Price business. He talked of that and the water power and the advantage that it would be to the Aluminum Co. to have that connection, to be interested in that power.

Q. What did he say of the advantages to the Aluminum Co. to have that power?—A. The future of the aluminum business would require great quantities of power; and I remember, too, he said that the Aluminum Co.—and that we ought to lay a basis for a broader and greater business on account of the developments that would make use of aluminum and that——

Q. That is, the great demand in the future, was that what he said?—A. Yes.

Q. The broadening demand for aluminum?—A. Yes; broadening demand, and that we ought to lay the basis for that; we ought to look ahead and have this power so that we could expand.

Q. Did he say he had been in the aluminum business?—A. No.

Q. How did he say that he knew of this great necessity there was going to be for water power?—A. Well, that was his vision.

Q. Well, what did he know about the aluminum business, or how had he learned about it?—A. Oh, well——

Q. Did he tell you?—A. Of course, he knew about the aluminum business; he knew that it was a consumer of power.

Q. Did he say how he had learned that?—A. No.

Q. What did he say as to how he had learned about this great prospective expansion of the business?—A. Oh, well, that was his speculation or imagination of the future of the business.

Q. Did he say he had looked into it at all?—A. He did not say that he had looked into the business, but just generally that here we had this great business, with its possibilities in regard to aviation and everything else, and there would be a great future to it.

Q. Did he mention that the Aluminum Co. of America was the only company of the size or substantial size manufacturing aluminum in America?—A. No; I do not think he mentioned that. That was generally known.

Q. But here was a man, as I observe, who never had any experience in the aluminum business telling to yourself and Mr. Davis his views in regard to what you ought to do in your business.—A. Well, that had not any significance. He had the power and wanted a customer for the power.

Q. Well, of course, there was always the possibility of his going into the business?—A. Yes.

Q. Did you speak of that?—A. No, no.

Q. But you understood it; that is, with all this great power, that it was adapted to the manufacture of aluminum?—A. Well, that was not discussed at all.

Q. I was wondering whether you appreciated that this great potential water development that he had that it was adapted to going into the aluminum business?—A. Oh, yes; I understood that, of course.

Q. Did he tell you that he had organized or caused to be organized in the December prior a company called an aluminum company?—A. No.

Q. The Quebec Aluminum Co.?—A. Not anything of that nature at all.

Q. Well, did you ask him?—A. No.

Q. Then, as I get it——A. It never occurred to me that he had been considering anything like that.

Q. Did he seem to be pretty well informed upon the aluminum industry?—A. Well, he did not talk much of the aluminum industry other than in the direction I speak of, that it had a great future. He was stressing the value of this power and the value of the Duke-Price business in connection with it.

Q. Was there any talk about bauxite deposits at that interview?—A. No.

Q. You knew bauxite was necessary?—A. Oh, yes; but there was nothing said of bauxite at all. We were not discussing the business.

Q. Well, as you have pointed out, he was discussing what he thought were magnificent opportunities for expansion in your business?—A. Yes.

Q. That is the aluminum business?—A. Yes.

Q. You did not ask him how he knew that, how a man, a stranger to the aluminum business, should be calling to the attention of a man who had been in it a great many years——A. Oh, no; that was a perfectly natural thing for him to speak of. Almost everybody has the same idea of the aluminum business, as having a very great future. It is one of these—to a certain extent it is a new business, in a sense, and a new metal, comparatively speaking, and it has——

Q. Tremendous possibilities of development and profit?—A. Yes.

Q. And you knew that Duke was a man of sizable fortune?—A. Oh, yes.

Q. And that if he wanted to go into the aluminum business he could?—A. Oh, yes; there was no doubt about that.

Q. He had the water power?—A. Yes.

Q. Which is one of the great fundamentally essential requisites?—A. Yes.

Q. Provided he could get bauxite. That is the other?—A. Well, I did not know that, but I was not particularly——

Q. Well, did you know that bauxite was the other great fundamental requisite of the business?—A. Oh, yes; I understand the situation in the industry very well, but——

Q. Did you understand where there were bauxite deposits that had not been acquired by the Aluminum Co. or some of its subsidiaries?—A. Yes; I knew that there are a great many sources of bauxite other than those owned by the Aluminum Co.

Q. Where?—A. Abroad; some in Italy and in Austria and Yugoslavia, and then in South America, and also to some extent in this country, although there is very little in this country of the grade of metallic content that would make it profitable.

Q. Did Mr. Duke in the course of this conversation, which I suppose went on intermittently from perhaps 8 o'clock in the evening until 1 or so in the morning——A. Yes.

Q. Tell you that he had been spending considerable sums in investigating the feasibility or practicability of going into the aluminum business?—A. No; he did not mention that.

Mr. MCCLENNEN. I think, Mr. Whipple, that perhaps in your assumption you have forgotten from your experience in Washington that you can not talk in the dwelling part of Washington until 1 o'clock and have a private car hitched to a 1.10 train.

Mr. WHIPPLE. I thought it was a 1.30 train.

The WITNESS. I do not recall how long they were there. I just recall that there came a time when they had to go, and they went. It was at least 12 o'clock, but——

Q. Well, call it that. During that time did Mr. Duke let drop that he had spent or caused to be spent very considerable sums of money in investigating the practicability of the aluminum industry?—A. No; no; he never said on that score.

Q. And I don't suppose it entered your head that possibly he might with his water power and bauxite which he could get hold of, of course—that he might possibly go into the industry or into the business?—A. Well, of course, I am positive that I had not any knowledge of any activity or anything in that direction upon the part of Mr. Duke. I am sure of that.

Q. Well, had anything been said on that subject?—A. Nothing.

Q. Between you and Mr. Davis?—A. No.

Q. I suppose you were always more or less on the lookout for possibilities of competition?—A. Well, as far as I was concerned, I was not on the lookout or thinking of the business. So far as the aluminum business is concerned, for a great many years I have depended entirely on Mr. Davis and I was——

Q. Well, I should perhaps have put it that you understood Mr. Davis was on the lookout for those possibilities?—A. Well, I was not troubling my mind about Mr. Davis lacking in resourcefulness so far as looking after the interest of the business is concerned. You might say he was practically the whole business and we depended upon him.

Q. Did Mr. Duke during the course of his suggestions as to what would be wise for the Aluminum Co. to do in respect of the development of his business point out the adaptability of his water power up there for an aluminum enterprise?—A. That is what he was speaking of, the advantage that it would be to the Aluminum Co.

Q. Did he speak of the geographical advantages or what were the advantages that he pointed out?—A. Well, the large quantity of power, the largest power development in the world or in America, I believe it was, or something of that kind.

Q. Did he say why he asked to see you about it?—A. I don't know; he may have.

Q. I beg your pardon?—A. I do not recollect of his having given any explanation of why.

Q. Was anything said either by Mr. Davis or Mr. Duke about further interviews that they had since Mr. Davis's talk with you in Pittsburgh?—A. No. As a matter of course, this dinner had come about through the conversations of Mr. Duke and Mr. Davis. There was not anything particularly said of that.

Q. You mean after the talk in Pittsburgh?—A. You are speaking of whether at this dinner anything was said about conversations?

Q. Yes.—A. No; there was nothing.

Q. I mean, were you told how far the negotiations had gotten along, whether they were any further along than they were in November?—A. No; according to my recollection there was not anything said of a particular plan or arrangement; it was a rather general conversation and it was all in the hands of Mr. Davis as far as any negotiations with

Mr. Duke were concerned, so he did not take up anything of that nature with me.

Q. Well, I do not quite see yet why, if it was all in Mr. Davis's hands, he wanted to talk with you.—A. Well, I suppose he recognized whatever was done would be—that I would be a factor in it, whatever it was.

Q. He did not propose anything particularly, did he?—A. No. When you say he did not propose anything, he suggested——

Q. Or did he?—A. He suggested taking in all of this property and taking an interest in the Aluminum Co.; that is, that we make some arrangements by which it would all be put together; just a suggestion of the advantages of the business and the power there, the advantage that it would be to us, and the advantage it would be to expand and have all this power for the future.

Q. But he had that; Mr. Davis had told you as much as that in Pittsburgh?—A. Oh, yes.

Q. Well, how much further did they get at this dinner?—A. I do not think that we got any further. There was no conclusions at all arrived at.

Q. Had you made any objection to Davis going in?—A. Had I made any objection?

Q. Yes.—A. No; I do not recall having made any objection. I did not know what the negotiation might develop into. I may have suggested, and I suppose I did to Davis, that if we could acquire the power, buy the power, that we ought to consider that for the Aluminum Co.

Q. Was that in the Pittsburgh interview?—A. No; I do not think so—well, I think perhaps it was in Pittsburgh. That was on the question of policy of acquiring the Duke-Price power project, and I said, "Well, he has not any market for the power and would he sell the property."

Q. Well, that is what Davis told you Duke had proposed; that is, that he wanted to sell it or put it into the Aluminum Co., was it not?—A. No; but my suggestion was that if we could buy it without regard to the use for the Aluminum Co. that it would be a fine property for the Aluminum Co. to own.

Q. Oh, you suggested that at the Pittsburgh interview?—A. I think so.

Q. And what you wanted to do was to buy it instead of taking Duke in?—A. Yes; that perhaps he would sell his power.

Q. Well, what did Duke say about that? Or what did Davis tell you?—A. I don't think when I talked with Duke I suggested that. I was depending entirely on Davis as far as the negotiations were concerned.

Q. But I do not quite see now the object of the dinner and the interview in Washington unless the thing had developed so that the gentleman whom they recognized as having really something to say about it was ready for something to be proposed.—A. Well, I did not consider that it was a meeting to discuss any plan, or any actual business, in connection with it. It was——

Q. Had you asked to see Duke?—A. Oh, no. It came altogether just as has been stated.

Q. That makes me inquire what Davis said to you was the object of meeting him.—A. That Mr. Duke wanted to meet me and talk this power proposition over with me.

Q. Yes; and having met you, the only thing you can definitely remember is that he said he had a very large water power and that there was ahead a great expansion of business in which the Aluminum Co. was engaged, and that he thought you ought to get the water power, or that in substance.

Mr. McCLENNEN. You have seemingly summarized what has gone before rather than ask any question, and you have omitted from the summary Mr. Duke's references to the paper business, and that as a potentially great user of power also.

The WITNESS. Yes.

Q. Yes; well, putting that in, that is the substance of all he said; that is, that he had a great water power, that the aluminum business had a great future, and that you ought to be on guard and look out for it?—A. Oh, no——

Q. And prepare yourself with water power?—A. As I recall this conversation, Mr. Duke was a very interesting man, and he started in and described his work up there in getting this property together; it had taken him a long time; and I remember he spoke of the different steps that he had to take and then about the nature of this power; that with this large lake—Lake St. John—that he had the right to raise the lake; I remember him speaking about the square miles of water; the franchise to raise the water 17 feet above what it then was, and this would make a continuous supply of power, of approximately a million horsepower. And he described the country up there, and then this paper business, and how this paper business was like the water power itself—yes; I remember it was the next thing to perpetual motion. He said now this water power, the rain falls over this country, and the water collects in Lake St. John, and so forth, and if we develop the power and use the water, it goes down the river and is evaporated into clouds, and comes down from the clouds again, and he says that is perpetual motion. Then he linked the paper business up with this perpetual motion; that this Duke-Price concern had so many square miles of great areas of this timber; some of it they owned and some of it—well, anyhow, they had this available supply, and in cutting over it—that when they got it cut over the beginning of the cut would have grown up again to a place, that they could start over again, and they had for all time to come a supply of this pulp wood through the growth and the area of what they had. And he was picturing that industry. Now, we would take that industry, become interested; he seemed to desire to have us interested in his water power and the Duke-Price industry and in the aluminum business in connection with it, and we would have such a great future.

Q. Had you ever had anything to do with the paper-pulp business?—A. No.

Q. Had he?—A. I don't know.

Q. I beg pardon?—A. I do not know, other than the Duke-Price interests.

Q. You never knew of his having anything to do with it?—A. No.

Q. And, therefore, although this man, as it appears now, had organized the Quebec Aluminum Co. and, as it appears now, had been spending considerable sums of money in investigating the aluminum business and had sought to talk with you, the thing that you can remember most is that he talked about a business that you had never been in—that is, the paper and pulp business, nor he either. May I ask if that accords with your memory?

Mr. McCLENNEN. Just note on the record an objection to that question as unintentionally argumentative rather than interrogative, and as assuming facts not in evidence and leading, and not the proper question to put to one's own witness.

Mr. WHIPPLE. Read the question.

(The question was read, as follows:)

"Q. And, therefore, although this man as it appears now had organized the Quebec Aluminum Co. and as it appears now had been spending considerable sums of money in investigating the aluminum business"——

The WITNESS. Well, I had no knowledge of any organization of his.

Q. No; but——

Mr. McCLENNEN. I think the witness ought not to be interrupted in his answer, and it is intensified by your assuming things not of his knowledge and not in evidence.

Q. I did not mean to interrupt you, Mr. Mellon.

Mr. McCLENNEN. I thought you almost involuntarily without meaning it had interrupted him. I think we had better go back and let him complete the statement that he was making.

Mr. WHIPPLE. Let us complete the question first and then make your answer in full instead of making it as you go along.

(The previous question was then read by the reporter.)

The WITNESS. Well, I would not say that I remembered it most. I have just given that as part of the conversation. Most of the conversation was this water power and the great extent of it.

Q. But are you quite sure upon reflection that he did not mention that he had been looking into the aluminum business and knew really a little something about it?—A. I am quite sure that there was nothing said to that effect.

Q. I beg pardon?—A. I am quite sure that nothing was said to the effect that he had been looking into the aluminum business.

Q. When next was this matter called to your attention after this dinner?—A. I am not very clear when or how long it may have been after that that I learned that Davis and Duke were approaching an agreement for the exchange of power with the Aluminum Co. I am not sure just how long it may have been afterward.

Q. Of course, you recognize that if the Aluminum Co. acquired this water power that no competitor or potential competitor could acquire it?—A. Well, there is no monopoly in water power. Canada is full of it. But this was a particularly desirable power.

Q. And particularly adapted to the aluminum business?—A. Well, of course, any power is adapted to the aluminum business.

Q. But this was the greatest in the United States?—A. So he said.

Mr. McCLENNEN. You do not want to put it that way, do you?

The WITNESS. In Canada.

Q. The greatest in North America?—A. I do not recall just whether he said it was the greatest in North America, but it was undoubtedly a great power.

Q. Did you talk with your brother about this at all after this interview?—A. Yes; on this question of making the reappraisement of the Aluminum property and making an exchange with Duke.

Q. Where was that talk?—A. I think that that was pretty much over the telephone.

Q. Did he come to Washington to see you about it at any time?—A. No; I do not recall that he came to Washington to see me about it.

Q. Do you remember anything that Mr. Davis said at this dinner in Washington or Mr. Allen?—A. I do not recall their part in the conversation. Mr. Duke I know kept up the conversation; he did most of the talking.

Q. Now, it may possibly refresh your recollection if I call to your attention the fact that on March 23, 1925, which was a little more than two months later, you see, after the dinner——A. Yes.

Q. Mr. Davis wired to Mr. Allen as follows:

"On arrival in Pittsburgh this morning I found Mr. R. B. Mellon had unexpectedly gone last night to Washington to confer with Mr. A. W. Mellon, returning to Pittsburgh to-morrow morning. I am therefore not able to make any progress to-day but will see Mr. Mellon to-morrow morning."

That is Exhibit 148 in the case. Do you remember that your brother did see you in Washington about it?—A. I have no recollection of my brother having come to Washington on this subject. I can not just recall. He may have.

Q. Did Davis come to Washington to talk about it?—A. I do not think so. I have no recollection that Davis came to Washington.

Q. Let me call your attention to the fact that two days later Davis wired Allen as follows: "My Washington visit is postponed until next week so I will be at your office to-morrow morning." (Exhibit 149.) That would indicate that Davis had arranged to go to Washington.—A. He may have.

Q. Do you remember about his coming or his planning to come?—A. I have not a recollection of Davis coming nor of my brother coming, but I would not say that they had not been there. My brother has been there at times and Mr. Davis has been there at times. But on this Duke power matter my nearest recollection is that my brother talked to me over the telephone about it, but he may have come to Washington.

Q. Then on April 7 Davis wired Allen, in part, as follows:

"Mr. A. W. Mellon and Mr. R. B. Mellon very much prefer the prior preference and straight preference plan that I outlined to you yesterday as they think it is a much better set-up for the future company and equally satisfactory if not a little more so to the stockholders than the original plan." (Exhibit 185.)

Do you remember having expressed your views on that subject?—A. I think I remember something of a plan of organization that was not the same as that which afterwards was arrived at, that I was consulted about. I can not recall just the particulars of it.

Q. Did you see any of the papers that were being drafted or being considered between the parties?—A. Yes; I remember I had sort of a typewritten set-up or something of that kind.

Q. Who furnished you with that?—A. I think that came from my brother.

Q. When?—A. Possibly it came from—well, it must have come from Pittsburgh.

Q. When?—A. I do not know. It must have been—that, of course, was along during this negotiation after the time we had the dinner.

Q. Have you that with you?—A. No; I have not thought of that until now. I had forgotten that there was such a thing. I will see if I can find whatever that was.

Q. That is a set-up of the proposed merger?—A. It was in connection with the reorganization of the Aluminum Co.'s structure, and there was something before we arrived at that which was concluded upon the one hundred and fifty million preferred and one hundred and fifty million common, there was something before that, since it has been brought to my attention, but I do not recall a great deal about it excepting that it is just my impression now that it appeared to be something not very clear but rather a complicated arrangement, whatever it was.

Q. Did you hear at any time the suggestion that in the reorganized company Duke should have one-ninth and the Aluminum Co. should have eight-ninths?—A. Yes.

Q. Were papers——A. That was the basis that was finally arrived at.

Q. When did you first hear that discussed?—A. Well, that was along during that period. There was the dinner in Washington and the next time was when I went on a trip up to Canada with the aluminum people.

Q. That was not until July, I believe?—A. That was in July; yes. Now, it was along in that period somewhere that this occurred that I am speaking of.

Q. I think the letter in which that was stated was April 15.—A. Which? April 15?

Q. Yes.—A. Yes.

Q. How long before that had you heard about Duke's having one-ninth and the Aluminum Co. eight-ninths of the stock of the company?—A. I could not say just when.

Q. Did you see the——A. I only thought of it when it was brought to my attention at any time, and I do not recollect just the dates.

Q. Who told you about that?—A. It was either Mr. Davis or my brother.

Q. Well, did they show you the paper when drafted?—A. Yes; they either showed it to me or sent it to me. I just recall seeing the paper.

Q. Was that agreed on at the dinner?—A. Oh, no.

Q. Mentioned?—A. No, no; there was no definite mention of any percentage or anything in that direction.

Q. Now, I understand that you did see the letter or proposed agreement in which this one-ninth and eight-ninths was referred to?—A. Yes.

Q. But you have not that among your papers with you?—A. I suppose so.

Q. Are they here?—A. No; I have not any papers here, and I do not know whether I have in Washington. It may have been that my brother showed that to me, possibly in Washington or possibly in Pittsburgh, and I may have a copy. I will look that up, but I could not say now.

Q. I will ask you to look at Exhibit 191, which is a copy, or which purports to be a copy, of an original paper that was furnished while Mr. Davis was testifying; and I want to call particular attention to this paragraph on the third page:

"The proposal is that you and I (this is written by Duke and accepted by Davis) will cause, with reasonable promptness, a merger of such United States Corporation with the Aluminum Co. of America or the corporation to which all of its property and assets will be transferred, whereby the resulting corporation will own all of the rights, franchises, and properties of both of said companies, correspondingly assuming all of their engagements, debts, and liabilities; and have authorized and made distribution of the capitalization as set forth in Schedule B hereto annexed as a reorganization of said two companies by way of such merger, the ultimate outcome being that of each class of the securities issued by the resulting corporation eight-ninths will be issued pro rata to the shareholders of the Aluminum Co. of America and one-ninth will be issued pro rata to the shareholders of such United States Corporation."

A. Yes.

Q. Do you remember that?—A. Yes; that is what was arrived at. I knew that but I never saw this; I never read any of the papers in connection with the negotiation.

Q. Just look at that letter and see if a copy of that was not furnished or shown to you.—A. No; I am quite sure I never read any of the papers connected with this. It was just sort of a tentative outline of the figures that was shown to me. I was not taking any responsibility for the carrying out of this arrangement or in the negotiation.

Q. But you remember that that was the conclusion that was reached?—A. That is what I was saying is that I never read any of the papers connected with this agreement.

Q. But you knew that of the securities of the new company one-ninth was to go to Duke?—A. Yes.

Q. Or Duke and his associates, as you said?—A. Yes.

Q. And eight-ninths to the Aluminum Co. You remember that?—A. Yes.

Q. Then do you remember that there was certain stock that was to be issued to Davis at $5 a share?—A. You mean the employees' stock?

Q. Well, was it employees' stock?—A. There was something about making some provision. I don't know of any special stock to Davis.

Q. Did you not know there was an agreement whereby a good many shares of stock were to be issued by the new company to Davis at $5 a share?—A. No.

Q. In plaintiff's Exhibit 239 or a copy of it, which is entitled "Agreement of merger and consolidation," which is dated July 9, 1925, between the Aluminum Co. of America and the Canadian Manufacturing & Development Co.——A. The which?

Q. The Canadian Manufacturing & Development Co., which was the new company organized, and which was signed by the Aluminum Co. of America by Arthur V. Davis, president, and by G. G. Allen, president of the Canadian Development Co. of America, and by all the directors of the Aluminum Co., including R. B. Mellon, and by all the directors of the Canadian Development Co., being Allen, Perkins & Ingersoll, there is this provision on page 9:

"There shall also be issued upon such merger and consolidation 147,262 additional shares of the common stock of the merged company, which stock shall be sold by the merged company at $5 per share to such person or persons (including the president of the merged company) and in such amounts to each as the president of the merged company shall determine, whether or not such persons shall be stockholders in the Aluminum Co. or in the development company or in the merged company."

Did you know that; do you remember that provision in the merger agreement?—A. No. That agreement, I suppose, is the agreement which was signed on the train when we were up in Canada. It was in another car, and I went in from Mr. Duke's car; I was with him in there, and they were all together, and I signed the agreement with the others. I did not read the agreement. I supposed, of course, that it was the agreement that had been under negotiation and that in a general way I was familiar with, but I did not read it and I do not know exactly the application of that which you speak of unless it is that which I was speaking of, that there was an arrangement for a certain amount of stock that was going to be divided. I think there was something of that kind.

Q. This does not say anything about employees?—A. No. There was no discussion of anything of that kind on the train at all. It was only that this agreement had been reduced to writing and was there to be executed and we executed it.

Q. Who reduced it to writing?—A. I do not know. I suppose Mr. Davis was concerned in it, because I was relying entirely—and my brother also—on Mr. Davis.

Q. Who were the counsel of the company?—A. I can not recall whether Mr. Gordon was the counsel, but he was not on that trip up there. I do not recall that any of the counsel of the company were there.

Q. No; but did you know who drafted the agreement or looked it over as counsel in behalf of the Aluminum Co.?—A. I do not. As I say, I was depending entirely on Davis.

Q. Here were 147,262 additional shares to be issued at $5 a share.—A. I see.

Q. Now——A. Well, as I recall, $5 a share was about the asset value of the common shares at that time.

Q. Was it?—A. That was the book value. I knew that, but I do not recall what this part of the agreement means or what it provides.

Q. This is a copy of the paper. Would you like to see what I read and see where its relation comes in Exhibit 239?—A. Yes; I would.

(Exhibit 239 handed to the witness.)

Q. That is a copy of the agreement of merger and consolidation of the companies.—A. Yes. As I said before, I never looked at this—I did not read it. They had it there and I knew of what was being done and went in and signed it.

Mr. McCLENNEN. Why don't you make sure that this is the one he speaks about? Of course there is nothing to show that.

Q. I am calling your attention to that and——A. I never examined any of the papers. Where was this particular paper executed?

Q. It was on the 9th of July.—A. What date was this trip we had; do you know?

Mr. WHIPPLE. What date was it, Mr. Park?

Mr. PARK. It was about the 9th.

Mr. McCLENNEN. Yes; but whether it included the 9th I would not dare to say.

Mr. WHIPPLE. That is on the 9th of July.

Mr. PARK. I think the photograph was taken up there on July 11, 1925.

The WITNESS. Oh, well, then; but the photograph was taken on our way down and this agreement was signed on the way up in Canada, but after we had left Montreal, I think.

Q. I do not find your signature attached at all.—A. There was something that struck me that they had this in another car or in a car that had the dining room and on the table was this and I thought——

Q. Was there something you had signed besides this?—A. I thought I had signed it. I went in there, I know, and I thought I had signed something. My brother was there also. He was with them.

Mr. McCLENNEN. Has this Mr. R. B. Mellon's signature on it?

Mr. WHIPPLE. Yes.

Mr. McCLENNEN. But not Mr. A. W. Mellon?

Mr. WHIPPLE. I do not think I ever heard of one before with Mr. A. W. Mellon's signature on it.

The WITNESS. Well, it is possible that I was not required to sign anything. I looked upon it as a matter that had been settled and they were all there and I supposed they were executing this paper.

Mr. McCLENNEN. Do the signatures on this exhibit purport to be of the stockholders or of directors?

Mr. WHIPPLE. Of directors.

The WITNESS. Well, then, I was not a director.

Q. No; you were not a director.—A. Then I did not sign it.

Q. But if you have a memory of signing something I would very much like to see it.—A. I would not be positive that I signed anything, but I was present there when they were signing the paper.

Q. I think it is quite likely that where one hundred and forty-seven thousand and odd shares were to be issued under the circumstances to persons not named but persons to be designated by the president that they might have been anxious to have had so important a stockholder sign by way of approval, but we have not found your signature anywhere.—A. Well, I do not know. I have not any recollection.

Q. Because if you have now discovered that for the first time you might wonder what became of so many shares.—A. Well, I do remember that there was an amount of stock that was to go to Davis and a lot of others there in the company. I took it as employees. I do not mean perhaps the workingmen and others in that way, but those connected with the company.

Q. Did you regard Mr. Duke as one of the employees in that sense?—A. No. Of this 147,000 shares was Mr. Duke a participant in that?

Q. We very much suspect he was.—A. Well, may this not have been——

Mr. McCLENNEN. I ask to have that statement of Mr. Whipple's suspicions stricken out as not founded on any fact and not being any part of this deposition.

The WITNESS. Might it not be this: On the basis of this reorganization which was made there was a certain amount of unissued stock of the old company, you know, that had not been issued and was in the treasury? It was, you might say, treasury stock; and that this represented that treasury stock, and if it did, would not Mr. Duke be entitled to his one-ninth of that treasury stock? If that is what the explanation of it is, or something on that line——

Q. Well, you see this agreement for merger gives one-ninth to the Canadian company which included Mr. Duke and his associates.—A. Yes.

Q. And eight-ninths to the Aluminum Co.—A. Yes.

Q. Then, besides that there are one hundred and forty-seven thousand odd shares that went to Mr. Davis for him to do with as is pointed out there, you see, to give them to such—will you let me read just what it is in order to be accurate—well, you read it.—A. "There shall also be issued upon such merger and consolidation 147,262 additional shares of the common stock of the merged company, which stock shall be sold by the merged company at $5 per share to such person or persons (including the president of the merged company) and in such amounts to each as the president of the merged company shall determine, whether or not such persons shall be stockholders in the Aluminum Co. or in the development company or in the merged company."

Q. Yes. You see, they could all be sold to the president if he said so.—A. Well, of course, I do not know what the purport of it is at all; but what occurs to me is that unissued stock that it took to round this thing out would likely have been issued in this way and a certain proportion of it was the stock that we contemplated giving to others who were not stockholders; that is, to officers of the company and all that, and then perhaps a portion of that also to go to the stockholders and to Mr. Duke. It may have been a provision of that kind.

Q. Do you remember anything about it?—A. I do not recall anything of it; no. But I do now recall there was the question of this surplus stock and dividing a certain amount, which I said would be agreeable, to divide among those as a sort of bonus stock or something, to those people. Now, there was something of that kind in this, there was some stock used in that way.

Q. Did you get any of it?—A. I may have. I don't know.

Q. Did your brother?—A. If I got any he did also.

Q. Do you know whether there was a provision whereby Mr. Duke should get something that his so-called associates in the Canadian company or the development company did not get?—A. No; I do not know that.

Q. You see the one-ninth under that merger agreement that was to be distributed was to go to the stockholders of the development company, and that included Price and Duke and his associates.—A. Well, I did not know that, but it only occurred to me that that might be an explanation. I should not go in when I know nothing about it and make any suggestions.

Q. And eight-ninths was to be distributed to the stockholders of the Aluminum Co.?—A. Yes.

Q. Now, did the officers of the Aluminum Co. get some bonus stock besides that?—A. I do not know. If they did——

Q. Well, that was your suggestion a moment ago, was it not?—A. Well, as I say——

Q. As a theory?—A. That was a theory, because you raised something here that I knew nothing about and I was casting about in my mind to see if I could offer any explanation for it. But I do not know anything in connection with this at all.

Q. Do you want to try again on an offer of an explanation, any different from what you have?—A. I do not know of anything else.

Q. Well, when you spoke about knowing as to some bonus stock.—A. In our conversations there was a tentative suggestion that we use some of this stock for these officers and workers in the company. I just recall that.

Q. Like whom, for instance?—A. Well, Roy Hunt and Withers, and so forth, and the engineers and such.

Q. Bonuses?—A. Yes.

Q. That would be something not distributable to the stockholders of the company in general but would go as bonuses to them?—A. Oh, entirely.

Q. Some of it to the president?—A. Yes.

Q. And some to the people who had been influential in bringing about the merger, or something like that?—A. Oh, no; nothing of that kind. It was for the work that they had done.

Q. What work?—A. Work in carrying on the aluminum business. They were employees.

Q. But that would not include Duke?—A. Oh, no. But when I was suggesting a theory in regard to Duke, as I say, I ought not to suggest any of these things, but it was just a theory that possibly this treasury stock that I speak of, this stock that had never been issued, and yet it was owned by the company; I think it had been issued, but there might be something whereby Duke would have a right to a share in it.

Q. Well, why Duke rather than the Canadian company?—A. Well, I don't know that.

Q. Because you see he was acting for the Canadian company.—A. Well, then, I would say it would be the Canadian company entirely, but I would have to——

Q. Were you told that Duke had a private arrangement with Davis for the distribution of some of this stock?—A. No; I never heard of that at all.

Q. Have you ever talked with Mr. Davis about the distribution of any of that 147,000 shares of $5 stock?—A. No; this is the first time I have thought of it, seeing it there.

Q. You will notice that that letter of April 15 which I handed you a few minutes ago was a proposal by Duke and accepted by Davis.—A. The letter of April 15?

Q. Yes; and that it was in behalf of their respective companies?—A. I see.

Q. Now, you see it begins, "I own a majority (that would be Duke) of the issued stock of the Quebec Development Co. hereinafter called the Quebec Co., a corporation organized under the companies act," etc., and then the Duke-Price Power Co. (Ltd.), which was constructing what was known as the Isle Maligne station on the Saguenay River. Then, there is a statement—will you refer to that where it says they are both acting for the respective companies? I guess we can agree that is in there. Then, on page 3, as I called your attention to it, "The proposal is that you and I will cause with reasonable promptness"—etc.—A. "And make distribution of the capitalization as set forth in Schedule B hereto annexed, as a reorganization of said two companies by way of such merger, the ultimate outcome being that of each class of the securities issued by the resulting corporation eight-ninths will be issued pro rata to the shareholders of the Aluminum Co. of America and one-ninth will be issued pro rata to the shareholders of such United States corporation."

Q. That is, there was a United States corporation to be organized, which was the Canadian Manufacturing & Development Co. finally; is that right?—A. Yes. I do not recall that I ever heard those names.

Q. Well, that represented the Duke interests, and you see the agreement was that eight-ninths should go to the stockholders of the Aluminum Co.—A. Yes.

Q. And one-ninth of the new shares to the stockholders of what we will call the Duke Co. which was to be organized representing himself and his associates. Now, what I want to ask is whether you knew that on the same day another letter was written by Duke to Davis in which Davis agreed to sell and deliver to Duke shares of the common stock of the resulting corporation at $5 a share in sufficient number so that when taken in connection with the shares of such stock received by himself and associates through such merger will constitute 15 per cent of the total issue of the stock?—A. I see. What is that?

Q. I will ask you to just read that and see if you knew of any such letter as that being written, which was to give to the Duke Co. stockholders one-ninth just, as stated in the agreement, but to give enough more to Duke personally so that their total holdings should be 15 per cent?—A. No; I had no knowledge of this letter nor of either of these letters.

Q. Did not Duke tell you about it?—A. No.

Q. Did Davis on this trip, when you met them, the trip to Canada?—A. No; I have no knowledge of it. Does this mean that Duke and his associates obtained 15 per cent of the Aluminum Co. instead of one-ninth?

Q. No; it does not mean, as I construe it, any such thing. It means that on April 15 one agreement was made whereby Duke and his associates were to get one-ninth for distribution among Duke and his associates, one-ninth of the shares of the new company, and Davis or the Aluminum Co. were to get eight-ninths for distribution among their stockholders, but that at the same time Davis promised Duke that he should get hold of enough shares, although the way is not there pointed out, at $5 a share to give Duke personally, not for himself and his associates, another 4 per cent of the total shares of the Aluminum Co., since you have asked me.—A. Yes.

Mr. MCCLENNEN. Just note an objection to the explanation as not an accurate statement of the letter which has been shown the witness, and which I take it is the one which purports to be characterized by the description given.

Mr. WHIPPLE. Will you point out in what respect it is not an accurate statement of that letter?

Mr. MCCLENNEN. Well, it would best be pointed out when the text of the letter becomes a part of the record.

Q. Were you aware of any such arrangement as that between Duke and Davis as was represented by that letter?—A. I have no recollection.

Q. Did you ever hear of any such thing as that?—A. Not to my recollection.

Q. Did you ever hear that Duke and his associates were to get for distribution one-ninth of the total issue of the shares of the new company but that through an arrangement between Davis and Duke in some way Duke was personally to get 4 per cent of the total capitalization more and in addition to the one-ninth?—A. I have no recollection of that additional percentage that you speak of.

Q. Did you consciously approve any such plan?—A. Well, I do not know; I do not know anything of it.

Q. I say did you consciously approve at the time of a certain percentage of the new shares going to Duke and his associates and through an arrangement between Davis and Duke written on the same day enough to make up 15 per cent of the shares were to be given to Duke?—A. I just—if there was anything of that said to me I have forgotten it, that is all. I have not a recollection of it.

Mr. WHIPPLE. I am going to have this paper which I used marked for identification.

(The paper was marked "Plaintiff's Exhibit No. 311 for identification, July 2, 1928, R. W. P.")

Q. Mr. Mellon, have you brought any papers at all on from Washington—correspondence or copies of correspondence?—A. No.

Q. And you have not personally looked for any among your files?—A. Not personally.

Q. Just what did you tell your secretary that you would like to have him look for?—A. It was to fix the date that Mr. Duke came to dinner.

Q. And was that all?—A. Well, I asked him for anything in connection with the Aluminum papers, to bring them to me, and he did not bring any so I——

Q. Did you ask him specifically to bring all the correspondence or copies of correspondence that you had had with either Duke or your brother or Davis in relation to this transaction with Duke?—A. I do not recall. I asked him to bring all the files for me to look at, and I just looked over them and I do not recall seeing anything there having to do with this.

Q. What I specifically asked for in the subpœna was for copies of correspondence passing between yourself and Mr. Davis, and yourself and your brother, and, I think, yourself and Mr. Duke.—A. Well, there was not any intention at all of leaving anything or not making a thorough search, but I have not any recollection of correspondence. I did not think there was anything in the files in connection with it.

Q. I was not suggesting any intentional purpose. I was merely trying to find out what instructions you gave to your secretary, and I was especially anxious to find out about it because in the case of Mr. Davis, he, trusting to his secretary or somebody else, neglected to produce in my deposition with him as far as I had gone what we regarded as a somewhat important letter or copy of a letter, and I wanted to be very sure——A. From me?

Q. No; from Duke.—A. Oh.

Q. And I wanted to be very sure that there was no mischance in reference to your instructions to your secretary so that your secretary might have overlooked his duty in that connection.

Mr. MCCLENNEN. Will you just note a motion to strike off the record Mr. Whipple's assertion as not germane to the deposition that is now being taken, not conceded fully accurate, and uncalled for so far as interrogating this witness is concerned, and irrelevant, incompetent, and immaterial and otherwise improper?

Q. Therefore I want to ask, Mr. Mellon, whether you specifically asked your secretary to look for and produce for you to bring here——A. You mean whether I was——

Q. Whether you did do it, copies of letter or letters passing between yourself and your brother either way, yourself and Mr. Davis either way, or yourself and Mr. Duke, if any did pass, on the subject matter of this merger or any of the facts which led up to it.—A. Well, before coming away at this time it did not occur to me, and I do not think there is anything, but it did not occur to me that there was anything to bring away; but it had occurred to me before in looking this up. I had the files brought in and looked over them, and I did not see anything that had to do with this transaction, and I do not think I have anything. When I go back I shall have a search made for them and see if there is anything.

Q. That would greatly oblige me, if you would.—A. Yes; I shall do that.

Q. And you see what I want particularly?—A. Yes.

Q. And that is correspondence or copies of correspondence or letters or memoranda of telephone conferences between yourself and Mr. Davis.—A. Yes; I shall do that.

Q. Yourself and your brother.—A. Yes.

Q. And yourself and Mr. Duke, and yourself and anyone else covering this period of time with reference to this merger or the negotiations which led up to it.—A. Exactly. I shall do that and bring anything, if there is anything, to your attention.

Q. Well, if you would.—A. Yes.

Q. And I should be glad to have a statement from your private secretary as to the care with which that search has been made.—A. Yes.

Q. I am not asking you to make it, and I am not intimating in the slightest that you have overlooked anything; but you see, if instructions are given to a private secretary, there might be a mistake, and that I want to avoid.—A. Yes. I am sorry that I did not go into it so I could say I had made a thorough search, but it did not occur to me to do it. But I did not recall, and I never read any of these papers at all.

Mr. WHIPPLE. As far as I am concerned, I am not going to keep Mr. Mellon any longer. That is all.

Mr. MCCLENNEN. I think I have no questions. I want to put in evidence as a part of Mr. Mellon's deposition this Exhibit 311 for identification; so if you will just strike off the identification, it may become Exhibit 311.

(The paper was marked "Exhibit No. 311, July 2, 1928, R. W. P.")

By Mr. WHIPPLE:

Q. There is a question which I omitted. Did you ever hear of one George D. Haskell, of Springfield, Mass., or of any other place?—A. He is the man who has brought suit?

Q. Yes.—A. Yes. Well, I have read—not during all this time, I have not heard of him, but I have read of the suit in the papers.

Q. Against the Aluminum Co.?—A. Against the Aluminum Co., and I inquired of Mr. Davis what it meant, and he explained it to an extent.

Q. And very likely you heard of him as bringing suit against Mr. Duke.—A. Yes.

Q. Or the Duke estate?—A. Yes.

Mr. WHIPPLE. That is all.

(It is stipulated by and between the respective counsel hereto that the signing of this deposition by the witness, Andrew W. Mellon, is waived.)

EXHIBIT C

The Gulf Refining Co. of Pittsburgh has been awarded the contract to supply the bunker fuel oil requirements of the Shipping Board Merchant Fleet Corporation vessels at Charleston, Savannah, Jacksonville, and Tampa over a 3-year period, in accordance with its proposal submitted July 30, it was learned here to-day. All other proposals, including bids of several oil companies for furnishing requirements at Boston, were rejected by the Shipping Board.

Terms of the contract call for supplying the estimated maximum requirements of 100,000 barrels per month at the four South Atlantic and Gulf ports for 93 cents per barrel at Charleston, Savannah, and Jacksonville, and for 90 cents per barrel at Tampa during the 3-year period commencing January 1, 1929. These fixed prices are for terminal delivery with an additional charge of 5 cents per barrel for barging.

HOLDS ALL CONTRACTS

With its contract for furnishing oil requirements at these ports, the Gulf Refining Co. now will supply about 8,000,000 barrels annually for Government vessels at all Atlantic and Gulf ports, since on July 10 it was awarded the first contract under the new 3-year period terms devised by the Shipping Board for fulfilling the needs at New York, Philadelphia, New Orleans, Galveston, and Port Arthur. The Pittsburgh company's contract on this calls for oil supply at an average rate of 92 cents per barrel for terminal delivery at New York and Philadelphia, with still lower average fixed prices at the other ports.

By virtue of these two contracts the Gulf Refining Co. will supply all oil requirements for Government vessels at Atlantic and Gulf ports. The maximum estimated requirement of the Government vessels at these ports is approximately 875,000 barrels monthly.

Bids for supply requirements at Boston will not be reinvited, it was announced by the board. The bunkering of Government vessels making port at Boston will be shifted to New York or Philadelphia.

[S. Rept. No. 7, pt. 5, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Messrs. BORAH, KING, and DILL, from the Committee on the Judiciary, submitted the following views (pursuant to S. Res. 2):

The committee, as we understand, is not in disagreement in any respect except as to question 2 submitted by Senate Resolution 2.

The controversy, or differences of view, arise over the construction to be given to section 243, Title V, of the laws of the United States. This section reads as follows:

"No person appointed to the office of Secretary of the Treasury, or Treasurer, or Register, shall, directly or indirectly, be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information."

The view we entertain is that a person may be interested in the business of trade or commerce—may, for illustration, be a stockholder in a corporation engaged in the business of trade or commerce—without becoming ineligible to the office of Secretary of the Treasury. His interest alone or his ownership of stock alone does not render him ineligible under this statute.

It seems to be contended by some that the statute should be construed as if the statute read:

"No person appointed to the office of the Secretary of the Treasury * * * shall, directly or indirectly, be concerned or interested in the business of trade or commerce."

It is argued that the words "carrying on" may be treated as surplusage, to be given no meaning, or force, or effect; a bad example of tautology. We do not so construe the statute. The words "carrying on" must be construed in connection with the other language in the section. The statute as a whole must be construed as a whole, if under any rule of reason you may do so. Under no rule of construction with which we are familiar are we justified in excluding this language as having no meaning or significance at all. The language was evidently placed in the statute for a purpose. The framers evidently had some object in mind, and, therefore, it should be given consideration in construing the statute. If the framers of the statute had desired to exclude everyone from this office who was interested in the business of trade or commerce, the plain, simple language by which that would have been accomplished would have been as follows: "No person appointed to the office of Secretary of the Treasury * * * shall directly or indirectly be interested in the business of trade or commerce." But evidently they did not intend to exclude everyone who might have an interest in such businesses. Evidently they intended to exclude only those who were directly or indirectly concerned or interested in "carrying on" the business, or who participated in managing or running the business, or in counseling and advising in reference to the management of the same.

We have not found any decisions of the courts construing this statute or a statute identical in terms. This leaves us to search for construction among decisions which, while not decisive or controlling, may be deemed instructive or persuasive. In addition to such decisions as may be found along that line, we are permitted to consider such practical constructions as may have been placed upon the statute by those departments of the Government having to do with the execution or maintenance of the statute.

The laws of the State of New York at one time provided:

"That no person shall be appointed to the office of justice of the court of special sessions unless he shall be a resident * * * no such justice shall receive to his own use any fees or perquisites of office; nor shall any such justice hold any other public office or carry on any business."

The words "carry on" were construed by the supreme court (appellate division) of that State. The court said:

"He can hold no other public office, can carry on no business, but is required to devote his whole time and capacity to the duties of his office. In the Standard Dictionary to 'carry on' is defined: 'To keep up; keep going; maintain; manage.' And in the Century Dictionary: 'To manage or be engaged in; continue to prosecute; keep in progress.' And I think to bring a person within the prohibition against carrying on a business there must be such relation to the business as imposes upon the person charged an obligation or responsibility to it, a responsibility for its management, the assumption of its control, or an obligation to perform duties in relation to it. The term 'to carry on a business' implies such a relation to the business as identifies the person with it and imposes upon him some duties or responsibility with its management." (Matter of Deuel, Supreme Court, appellate division, vol. 127, p. 632.)

The same principle was announced in the case entitled "Matter of Levy." (Supreme Court, appellate division, vol. 198, p. 326.) We quote from the syllabus of the case:

"The term 'to carry on a business' implies such relation to the business as identifies the person with it and imposes upon him some duty or responsibility in connection with its management."

In the above case the respondent held 10 per cent of the capital stock of a business corporation.

We do not refer to the foregoing opinions as conclusive upon the question here, but they are persuasive. The court clearly holds that carrying on a business has a significance and a meaning wholly aside from a mere interest in the business, such as that of a stockholder; that it implies much more and something different from an interest in the business or concern in the business. It must be concluded from these cases that the court was of the opinion that the ownership of stock is not sufficient to constitute a violation of the statute which provided against having an interest in carrying on a business. In other words, "to carry on a business" there is an obligation, a responsibility, an authority with the one that is in no sense a part of the other, a mere interest in the business.

The violation of law, however long continued, and regardless of the high standing of the parties, will not, of course, change the law nor exempt those who repeat the violation from the penalties of the law. But when a construction of the law is involved and the meaning is in doubt it has always been considered proper to take into consideration the practical construction placed upon it by those brought in touch with it. And even acquiescence upon the part of those having responsibility in the acts or conduct of parties operating under the law may be considered.

The records will bear out the contention that never has a mere interest or the mere ownership of stock in the business of trade or commerce been regarded as rendering a party ineligible to the office of Secretary of the Treasury. From Alexander Hamilton to the present incumbent, Secretaries of the Treasury have been interested or have been stockholders in corporations engaged in the business of trade or commerce. We do not know, because the records are not available, whether all Secretaries have been so interested. But we do know that a great number of them have been. Secretary after Secretary, men of the highest and most sensitive regard for the integrity of official conduct, have

been holders, and in some instances large holders, of stock in corporations engaged in trade or commerce. This fact has been known to the different departments of the Government, including the House and the Senate. Such interests have been held without challenge from anyone as to the eligibility or fitness of the incumbent. Thus by long practice has a construction been placed upon the statute which we are entitled to consider in our effort to arrive at the true meaning of the law.

The Supreme Court of the United States, in the Mid West Oil case (236 U. S.), in passing upon the power of the Executive to make temporary withdrawals of public land, took into consideration the silence of Congress as to the practice of the Executive and the legality of such withdrawals. Reasoning upon the same principle, it will throw some light upon the proper construction of this statute to take into consideration the acts of the Executive, the different Secretaries of the Treasury, in conjunction with the acquiescence if not affirmative approval of the Congress.

When we take into consideration, therefore, the language of the statute itself, distinguishing, as we think it does, between an interest in and the carrying on of the business, when we take into consideration the practical construction placed upon the statute through these years, together with the opinions of the courts in cases involving the construction of statutes of a similar import, we have no doubt that a fair and reasonable construction of the statute does not deny an incumbent the right to hold stock in a corporation engaged in trade or commerce.

It should be borne in mind also that when Mr. Mellon was being considered for the office of the Secretary of the Treasury he took advice of able counsel relative to the meaning of the statute. These lawyers, including ex-Senator Knox, were of the opinion that an interest in the business or the holding of stock did not render Mr. Mellon ineligible to the office. It was after careful consideration of all the facts and of the law that Mr. Mellon received his appointment, was confirmed by the Senate, and has since been continued by two subsequent Presidents in the Secretaryship of the Treasury. He has served eight years, and during that time the fact that he was a stockholder in large corporations engaged in trade or commerce was known to all, known to the different departments of the Government, known to the Senate and House of Representatives, the executive department, including the legal department of the Government.

The most noted incident arising under this law is that in reference to the appointment of A. T. Stewart, the great dry-goods merchant in New York City. President Grant named Stewart Secretary of the Treasury. He was promptly confirmed. Objections were made immediately thereafter based upon his ineligibility under the act now before us for construction. Stewart immediately sought legal advice. He was advised that as he was heavily interested and actively conducting a large business in trade and commerce he could only avoid the statute by retiring from the business. Stewart stated that it would be impracticable, if not impossible, to get out of the business inside of five years. The President sought a joint resolution exempting Stewart from the operations of the law and sent a message to Congress to that effect. But there was objection to the resolution; also objection to repealing the law. In fact, it now developed that there were objections to Stewart upon the part of the high protectionists, Stewart being a free trader. Some one proposed that Stewart enter into an agreement to give the profits of his business to charity—an irrelevant suggestion from the standpoint of the law. It was also claimed that Stewart had constantly large claims for heavy drawbacks on duties. On March 8, in an editorial in the New York Times, it was said:

"The most direct and unobjectionable mode of meeting the difficulty would be for the newly appointed Secretary to retire from the commercial business which brings him within the prohibitions of the law; but in Mr. Stewart's case this seems to be impossible. His business is so extensive and so complicated that, as he himself is reported to have said, it would take him five years to withdraw from it."

Finally, on March 9, 1869, Stewart sent in his resignation. In his resignation, among other things, he said:

"The business relations of my firm in its connection with others largely interested in their continuance are such that they can not be severed summarily, nor can my interest in it be wholly and absolutely disposed of without great embarrassment and loss to those with whom I have been connected."

Manifestly, Stewart under any construction of the law was ineligible. He had the largest trade in dry goods in the United States. He was in the immediate, active management of the business, giving it his personal attention and direction. As he felt he could not justify getting out of the business, he resigned.

But while an interest or the holding of stock will not alone render a person ineligible to the office the terms of this statute are such as to exact from the holder of such interests or stock the most scrupulous observance of the difference between an interest or ownership of stock and the management or carrying on of the business. Undoubtedly the purpose of the law was to divorce the Secretary of the Treasury from all attachment to his private interests, to the detriment of the public business. Responsibility for his private interests were not to be permitted to conflict with the responsibilities attaching to his public office. His time, his mind, his concern were to belong to the public, to his office. The distinction between the ownership of stock and concern or interest in carrying on the business is so narrow that it can only be measured in many instances by a keen sense of honor and propriety upon the part of the official.

If he counsels, or advises, or directs—although he may not be a director or officer of the corporation—still he would, it seems to us, be directly or indirectly engaged in the business of carrying on trade or commerce. And in considering these matters, one would have to take into consideration also the amount and the extent of his interest in the business. This may seem to render the law antiquated and unreasonable under modern business conditions. It may be contended that such an interpretation of the law would make it difficult to find a competent party to fill this office. But the answer to all such contentions is at hand and is full and complete—amend or repeal the law.

Our personal views are that the law is sound in principle, but it is poorly expressed in the light of modern methods of carrying on business. As it is now written, it is susceptible of abuse, both by those who hold the office and by those who would criticize the official. The law should be made plain by specifying what interests, if any, the official may have and what constitutes "carrying on the business." The principle and the purpose of the law no doubt have a wise foundation. But it ought to be adapted in its language to present circumstances and conditions. It should be expressed in language which would constitute a clear rule of guidance and conduct for the official and also a definite measure by which the public could gage and protect its interests.

We do not consider that such facts and circumstances have been placed before the committee in detail as would permit us to form an opinion whether as a stockholder Mr. Mellon has actually counseled or advised or been interested in the carrying on of the business in which he is a stockholder. We therefore content ourselves, as we feel we must, to a construction of the law as we understand it.

WM. E. BORAH.
WILLIAM H. KING.
C. C. DILL.

[S. Rept. No. 7, pt. 6, 71st Cong., 1st sess.]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. ASHURST, from the Committee on the Judiciary, submitted the following individual views (pursuant to S. Res. 2):

The Senate has no power to institute and commence impeachment proceedings; that power is by the Constitution committed to the House of Representatives.

A concise discussion of this question will be found by reading the remarks of Hon. GEORGE W. NORRIS, Senator from Nebraska and chairman of the Senate Committee on the Judiciary, delivered in the Senate on March 5, 1929, when this resolution was considered. The substance of what Senator NORRIS then said is as follows:

"Mr. NORRIS. Mr. President, * * *. The Constitution of the United States confers exclusive jurisdiction upon the House of Representatives to impeach officials who are guilty of misdemeanors or high crimes. The House would have to decide, the same as a prosecutor would have to decide in a case in court, whether the defendant, or whether, as in this case, the respondent, was guilty of a misdemeanor. The Senate ought to hold itself aloof, because in case the House should impeach it would become necessary for the Senate to try the impeachment.

"It seems to me, having exclusive jurisdiction of such trials, we ought not to consider this matter, first, because we have no impeachment jurisdiction, and second, we should not express in advance an opinion, either as to fact or law, on the action of a public official who, under the Constitution, is liable to impeachment by the House and trial by the Senate.

"To me it seems perfectly clear that that part of the resolution ought to be eliminated. Suppose, for instance, we should agree to the resolution and the Judiciary Committee should report, after looking up the law, that in its judgment the Secretary of the Treasury had not violated any law, and let us suppose that the Senate approved that decision. We would have gone on record then officially upon a question that, so far as any effect is concerned, we would have no jurisdiction to try until an impeachment proceeding came regularly before us.

"Suppose that afterwards the House began impeachment proceedings against Mr. Mellon and found that he was guilty and impeached him and the articles of impeachment came to the Senate as a court to try Mr. Mellon. We would have already gone on record on the merits of a question upon which, regardless of how we should find, we could not act unless the official were impeached and we should be trying him for a violation of the law. It would at least put the Senate in rather an embarrassing position.

"Suppose we find the reverse of what I have suggested and the Judiciary Committee holds, upon hearings, that Mr. Mellon is guilty and that he has violated the law, what are we going to do about it? We can not try him. We can not both impeach him and try him. We are at the end of the string so far as the Senate is concerned. We have held that he is not guilty. We have in realty taken the place of the House of Representatives."

When a tribunal discovers that it has no jurisdiction the only order it may then properly enter is the order declaring that it has no jurisdiction.

Respectfully submitted.

HENRY F. ASHURST.

FARM RELIEF

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 1) to establish a Federal farm board to aid in the orderly marketing, and in the control and disposition of the surplus, of agricultural commodities in interstate and foreign commerce.

Mr. SHORTRIDGE. I submit three proposed amendments to the pending bill and ask that they be printed and lie upon the table.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. FLETCHER. Mr. President, I ask to have inserted in the RECORD a telegram from a committee of fifty of Florida Citrus Growers Clearing House Association, with reference to the exclusion of fresh fruits and vegetables from the pending measure.

The VICE PRESIDENT. Without objection, it is so ordered.

There being no objection, the telegram was ordered to lie on the table and to be printed in the RECORD, as follows:

WINTER HAVEN, FLA., *May 8, 1929.*

Senator DUNCAN U. FLETCHER,

United States Congress, Washington, D. C.:

Whereas there is pending in the Congress of the United States an act known as the Federal farm board act and said bill, as introduced, has been passed by the House of Representatives and is now pending in the Senate; and

Whereas said act, as passed by the House of Representatives, enables the State of Florida and the citrus industry to come under the full provisions of the act; and

Whereas there has been introduced in the Senate an amendment to said act, which, if adopted, would exclude fruit and vegetables from the benefits of the law if passed; and

Whereas the principal industry in Florida, as well as California and many Southern and Southwestern States, is fruit and vegetables: Therefore be it

Resolved, That the advisory committee of fifty of the Florida Citrus Growers Clearing House Association voice their unalterable opposition to such an amendment and that we request Senators TRAMMELL and FLETCHER and the four Congressmen in the House of Representatives from Florida to vigorously oppose and prevent, if possible, the adoption of such amendment to the said Federal farm board act; and be it further

Resolved, That a copy of this resolution be mailed to President Herbert Hoover, Secretary of Agriculture Arthur M. Hyde, United States Senators PARK TRAMMELL and DUNCAN U. FLETCHER, and Representatives HERBERT J. DRANE, R. A. GREEN, TOM A. YON, and RUTH BRYAN OWEN.

COMMITTEE OF FIFTY OF FLORIDA CITRUS GROWERS CLEARING HOUSE ASSOCIATION.

Mr. COPELAND. I ask that the amendment to the pending bill which I send to the desk may be read.

The VICE PRESIDENT. The amendment will be read.

The CHIEF CLERK. The Senator from New York offers the following amendment: On page 25, and immediately following subparagraph (d) it is proposed to insert a new subparagraph to read as follows:

(e) As used in this act, the words "agricultural commodity" mean an agricultural commodity which is not a fruit or a vegetable: *Provided, however,* That this subparagraph shall not apply to the provisions of section 9.

The VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from New York.

Mr. COPELAND. Mr. President, there have been innumerable telegrams received by Members of the Senate relating to the inclusion or the exclusion, as the case may be, of perishables from the pending bill. There are several thoughts expressed in those telegrams. One group desires that all fruits and vegetables be excluded; another group desires that apples and pears be excluded.

There are those who wish to have every other reference to the possibility of the formation of any governmental body relating to perishables excluded from the bill. I have in mind section 9, on page 17, which permits the organization of clearing-house associations.

Mr. McNARY. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Oregon?

Mr. COPELAND. I yield.

Mr. McNARY. I did not gather what the Senator said regarding clearing-house associations. Does the amendment propose to take fruits and vegetables out of the operation of the clearing-house section?

Mr. COPELAND. I said that one group desired the exclusion of fruits and vegetables not alone from the body of the bill but also from section 9, which provides for clearing-house associations.

I assume that the purpose of this bill is to give relief to the farmers of the country. Its purpose is to help agriculture, but certainly it is not intended to damage any of the other industries of America.

I wish to say in all seriousness, Senators, that I have gone far as a Senator from the State of New York in voting for the modified debenture plan. I did so because I think that my city and my State can not prosper unless the farmers of America prosper. I did what I did in all good conscience because, in the first place, the farmers need aid, and, in the second place, in my judgment, my State is benefited when the farmers of America are prosperous; but I should be very sorry indeed to have the Senate now adopt a measure which would be of positive damage to many great industries of my State.

The charge has been made on the floor of the Senate that those who are in opposition to the inclusion of fruits and vegetables are commission merchants; that they are not growers of these products but are the men who are engaged in the industry of receiving and marketing the products. I shall concede at once that that is true, but that is not all the truth. I find in my State that many growers of fruits and vegetables are opposed to the inclusion of perishables in the bill.

Mr. REED. Mr. President, will the Senator yield for a question?

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Pennsylvania?

Mr. COPELAND. I yield to the Senator.

Mr. REED. The farming industry in the Senator's State is very much like that in Pennsylvania, and I am wondering whether the Senator has not, as I have, received a very large number of protests from the dairy industry, asking that dairy products be similarly excepted from the bill?

Mr. COPELAND. Oh, yes; I have had many.

Mr. REED. They are not from brokers or dealers but from the actual dairymen themselves.

Mr. COPELAND. From the Dairymen's League, for instance. To my mind, the Dairymen's League is the greatest cooperative organization in America. It was organized by farmers; it is managed by farmers, and has been successfully operated by farmers; and they, as the Senator from Pennsylvania suggests, are in bitter opposition to the bill.

Mr. HEFLIN. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Alabama?

Mr. COPELAND. I yield.

Mr. HEFLIN. What reasons do the truck farmers and dairy people give for wanting to get out from under the provisions of the bill?

Mr. COPELAND. I shall undertake in the course of my brief remarks to tell what reasons they give.

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Nebraska?

Mr. COPELAND. I do.

Mr. NORRIS. Before the Senator goes into that, I think I ought to ask a question which was suggested to me by the question submitted by the Senator from Pennsylvania [Mr. REED] about the dairymen.

The Agricultural Committee during the past several years have had before them on various bills, including this one, representatives of dairymen's organizations. I should like to preface what I say by suggesting that I have been impressed, as I think other members of the committee have, with the intelligence and the wisdom and, I think, the fairness, of these dairymen's representatives. I think we will all agree that they are very high-class men, conscientious and honest in what they are trying to accomplish; but I should like to call the attention of the Senator from New York and the Senator from Pennsylvania to the fact that the head of the Dairymen's Association appeared before the Agricultural Committee on this particular bill, favoring it. He did advise—and I think his advice in that respect was wise—that we strike out of the bill these advisory committees. I have such a motion pending, but I do not want to press it if the friends of the bill feel as though it ought to be kept in. This representative, however, as I understood his testimony, was in favor of the particular bill we had before us if we were to strike out of it—and I think he would be in favor of it even if we did not—what appeared to him and what appears to me to be a useless and expensive appendage.

Mr. REED. Mr. President, will the Senator from New York yield to me to reply?

Mr. COPELAND. I yield to the Senator from Pennsylvania.

Mr. REED. In passing on questions like this I think we all ought to try, at least, to look at them from the national standpoint, and not be too much controlled by what we get in the way of advice from the people in our home States. Nevertheless, we are all interested in knowing the attitude of our own farmers on this national proposition. I do not think I have had half a dozen letters from Pennsylvania farmers in favor of either the House bill or the Senate bill. I have had hundreds of letters opposing both bills. I do not know the name of the gentleman to whom the Senator refers——

Mr. NORRIS. If the Senator will permit an interruption there, I will give him the name.

Mr. REED. I am afraid it would not help me, anyway; but I do not recall any communication from any dairymen that was not to the effect that all they wanted was to be completely left out of the operation of the bill.

Most of them made no objection to the wheat farmers and the corn growers of the West having this relief if Congress saw fit to give it to them, but for themselves there is practically a unanimous expression of opinion from the farmers of Pennsylvania that they want to be left out of it, and they urge me to do my best to have the bill modified so that they will be wholly left out.

Mr. FLETCHER. Mr. President, may I interrupt the Senator?

The PRESIDING OFFICER (Mr. SACKETT in the chair). Does the Senator from New York yield to the Senator from Florida?

Mr. COPELAND. I do.

Mr. FLETCHER. I merely wish to suggest that under the provisions of the bill it is purely optional whether they come in or not.

Mr. REED. That is what is always replied; but they say that they prefer to do business as individualists. If they continue that way, and do not go in under the terms of the bill, they will be hopelessly handicapped in competition with these Government-aided cooperatives in the West.

Mr. BROOKHART. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Iowa?

Mr. COPELAND. I do, although after a while I should like to make some of my speech myself; but the interruptions are so effective that I gladly yield.

Mr. REED. The Senator is so generous in lending his time that I wanted to advance that thought and this further thought and then sit down: Has the Senator considered broadening his amendment so as to take out not only vegetables and fruits but also dairy products?

Mr. COPELAND. Yes; I am glad to do that. I want to get out of it all the products I can in this line and I will accept the suggestion of the Senator. I will back it up in a moment by the support of many milk producers in my own State.

Mr. BROOKHART and Mr. BLAINE addressed the Chair.

The PRESIDING OFFICER. Does the Senator from New York yield; and if so, to whom?

Mr. COPELAND. I yield first to the Senator from Iowa.

Mr. BROOKHART. On the proposition just suggested by the Senator from Pennsylvania that it is optional whether these people go into this arrangement or not, and if they do not go in and others do go in it will benefit the price and the market, I can not see where that is going to do any damage to those who stay out. In fact, it will be just as beneficial to those who stay out as to those who go in. The ones who stay out have nothing to pay. That has been one of the troubles about it.

Mr. COPELAND. Let me say to the Senator from Iowa that we have gone a long way to help the grain enterprise that he has in mind. If there are certain groups represented in Pennsylvania and New York and other States that wish to stay out, bear with us a little while until we put the facts before you. See if we can not induce you to exclude these particular products from the operation of the bill.

Mr. BROOKHART. I am not objecting to the Senator's putting the facts before us, but I was giving him my view of the situation after they are before us.

Mr. BORAH and Mr. BLAINE addressed the Chair.

The PRESIDING OFFICER. Does the Senator from New York yield; and if so, to whom?

Mr. COPELAND. I yield first to the Senator from Idaho.

Mr. BORAH. As I understand the bill, and as suggested by the Senator from Florida [Mr. FLETCHER], it is optional with producers now as to whether they shall go in; but if we adopt the Senator's amendment it would prevent those from going in who desire to go in. That seems to me a rather selfish position to take—that when a person has an option as to whether he will go into the scheme or not, he wants to deny others the privilege of going in. He may stay out if he wishes to, but he wants such an amendment as will make it impossible for those to go in who want to go in.

Mr. COPELAND. I assume that the Senator from Idaho is interested in potatoes, because, of course, next to the New York potato, the best potato in the world is the Idaho potato, especially baked.

Mr. KING. Except the Utah potato. [Laughter.]

Mr. COPELAND. Except the potato of all the other States, I assume.

Mr. WALSH of Montana. Will the Senator except Montana also? [Laughter.]

Mr. COPELAND. I think I will say that the New York potatoes are the only good potatoes.

Mr. SIMMONS. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from North Carolina?

Mr. COPELAND. I do.

Mr. SIMMONS. I am interested in potatoes also, and although the Senators from Montana and Idaho, as I understand, would probably be willing that they should be dropped, I am not. I want potatoes included.

Mr. BORAH. No; I have not said anything about potatoes being dropped. I am opposed to dropping them.

Mr. SIMMONS. Then I misunderstood the Senator.

Mr. BLAINE. Mr. President——

Mr. SIMMONS. I was wondering whether the Senator from New York is not more interested in perishable fruits in his State than he is in nonperishable vegetables. The potato can not be classed as a perishable vegetable. By proper treatment it can be preserved for a very long period of time.

All over this country potatoes are raised. They are raised extensively in the South Atlantic seaboard States, and those potatoes are largely exported. Nearly $4,000,000 worth of potatoes are exported annually. The producers of this vegetable in my State have communicated with me, and have expressed an earnest desire to be included in this bill. I was just speculating as to whether the Senator from New York was particularly interested in excluding potatoes. I know that he is probably interested in excluding fruits, but I hope he is not interested in excluding potatoes or any other nonperishable vegetable.

Mr. COPELAND. I may say, in reply to my friend from North Carolina—who always gives serious thought to these matters—that I have thought that potatoes should be left in the bill——

Mr. SIMMONS. I am glad to hear that.

Mr. COPELAND. Take what occurred last fall: I think I said the other day in the Senate that I had an appeal made to me—because I talk over the radio occasionally about foods—by a farm bureau in Pennsylvania, begging me to talk about potatoes. We had an enormous crop, and as a result of it the prices were very low. That is a product which can be handled, a product which is strictly nonperishable, and therefore might come under the operation of the bill as we have it before us.

I feel the same way about grapes. The Senator from California [Mr. JOHNSON]——

Mr. SIMMONS. Before the Senator takes up the subject of grapes, would he not be willing to amend his amendment by saying "nonperishable vegetables"?

Mr. COPELAND. I am willing to have some language added to the amendment which will make it clear that so far as potatoes are concerned my amendment shall not apply.

As I started to say about grapes, almost all of the letters and telegrams I have had from my State wishing to have perishables left in the bill came from grape growers. The grape industry has developed remarkably since prohibition came into force. With the deprivation of alcohol there seems to be something about the grape which makes it popular with people. I do not undertake to go into the reasons for it, but I can see why grapes might be excluded.

But let us go back to the question of milk.

The Senator from Pennsylvania [Mr. REED] called attention to the attitude of the dairymen. Let me say, Mr. President, that I know about the operation of the Dairymen's League. One reason why I have been enthusiastic for farm relief since the measure first came up is because I have seen what the Dairymen's League has accomplished for the dairy farmers. I voted three times for the McNary-Haugen bill, much to the disgust of some papers in my city and State. The charge was made that it would not be possible for the farmers to organize and show business sense enough to deal with this great problem of American agriculture. I knew better, because this great organization, the Dairymen's League, which has 70,000 mem-

bers in my State, has demonstrated the possibility of dealing with its problem in a very businesslike way. But I want you to know that the Dairymen's League is opposed to this bill and to the inclusion of dairy products in it.

I have here a number of telegrams from different branches of the Dairymen's League. I want to refer to them because I want the RECORD to show exactly where that organization stands.

Here is a letter from the Port Leyden Dairymen's Association, of Lewis County, N. Y. They are opposed to the whole bill, unanimously opposed to the bill as passed by the House. Of course, I assume that when they learn that the debenture provision is to be in it, they may have a change of heart.

Here is a telegram calling attention to the fact that the National Milk Producers' Association is opposed to the bill. Here is a telegram from the Dairymen's League, after a meeting of the organization of the counties of Livingston, Monroe, Ontario, and Wayne, in my State, stating that they take the same position of opposition; likewise the Dairymen's League of Northeast Pennsylvania. I do not know how that got into my list of telegrams. It was sent to me by mistake, undoubtedly. Here is a message from the Mayville Dairymen's Association, from the Cattaraugus County Dairymen's Association, representing 2,000 dairymen, and so on.

I am here to say that the dairymen from Middletown, Ripley, and Richmondville, and from every other section of my State are in opposition to being included in this bill.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Nebraska?

Mr. COPELAND. I yield.

Mr. NORRIS. I wanted the Senator to permit me to correct what I stated when I interrupted him just a few moments ago. I left the impression, and I was under the impression, that the representative of the Milk Producers' Association was not opposed at least to the Milk Producers' Cooperative Association remaining in. I find, in looking the matter up, that I was wrong in that.

Mr. COPELAND. That is the first time I have known the Senator to be wrong, and I am very sure he is to be excused from being wrong once.

Mr. HEFLIN. Mr. President, before the Senator goes further into the argument, I want to ask him if it is his purpose and his desire to fix the matter so that none of these people can get in even if they want to.

Mr. COPELAND. That is the thing I have in mind—that they desire to be absolutely excluded from the operation of the bill.

Mr. DILL. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. DILL. I want to point out to the Senator that I think the chief weakness of this bill in regard to fruits and vegetables is to be found in the provision which allows the board the discretion of granting a certificate for a stabilization corporation whenever the board desires to do so. If the measure required that a certain percentage—say 75 per cent, or even a majority—of those engaged in an industry were required to apply to come under the stabilization corporation, there would be much to be said for the position of those who support the proposition; but under the present provision of the bill we are left absolutely at the mercy of this board. That is the danger of the situation.

Mr. McNARY. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Oregon?

Mr. COPELAND. If the Senator will bear with me a moment, the Senator from Washington has put his finger exactly upon the point. If the board at its pleasure can organize an association to undertake to deal with a given product, we will say like apples, then all the existing institutions which have invested large sums of money in buying up a crop, in storing it, and preparing it, do not know at what moment the Federal board will go into the business and throw upon the market at the wrong time products which will crush the market and destroy these industries. That is the point the Senator makes, and it is well put.

Mr. DILL. Mr. President, the growers or producers of certain products of a single State must find themselves in trouble. They may never have had a cooperative association in the past, they may proceed to organize one, and make representation to the board that they are entitled to be allowed to have a stabilization corporation. If they are able to induce the board to grant them a certificate, then those engaged in that industry in every other section of the country must compete with a Government-aided corporation or find itself forced to go in.

Mr. WALSH of Montana. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. WALSH of Montana. I shall offer an amendment, a copy of which is printed and lies on the desk, which will relieve the situation referred to by the Senator from Washington to some extent. It reads as follows:

> The board shall adopt rules specifying the qualifications requisite to entitle a cooperative association to join in an application for the certification of a stabilizing corporation and all cooperative associations possessing such qualifications shall be permitted to join. And any such cooperative association shall, at any time, upon application, be entitled to admission to membership in such stabilization corporation upon such terms as the board may from time to time prescribe.

So that every association will be given an opportunity in the first place to join if it desires to do so, or, if it does not join at that time, or comes into existence later, it will be entitled to go into the stabilization corporation upon such terms as are prescribed. I understand perfectly well that that does not quite meet the point raised by the Senator from Washington. As I understand, he wants to restrain the board from certifying any stabilization corporation unless the request comes from a specified proportion or percentage of the cooperative associations engaged in the particular line of marketing, but it will help the situation, because if my amendment should be adopted, any association having the requisite qualifications which desired to join might join upon application.

Mr. DILL. Mr. President, will the Senator from New York yield?

Mr. COPELAND. I yield.

Mr. DILL. With all due regard to the opinion of the Senator from Montana, I think that his amendment does not meet my objection at all. My objection is not to the fact that any properly qualified cooperative may join; my objection is that cooperatives in a certain part of the country may be given a certificate to form a stabilization corporation while the great body of the cooperative associations in the country that do not want any Government interference will then be forced to compete with a Government-aided corporation, or be forced to join in the stabilization corporation.

Mr. CARAWAY. Mr. President, will the Senator permit me to ask the Senator from Washington a question?

Mr. COPELAND. I yield.

Mr. CARAWAY. If the cooperative association going in is so much helped that it can drive out people who do not go in, why is it not a wise provision to let all of them go in?

Mr. DILL. Because, if I may be permitted by the Senator, the very formation of the corporation as to perishable products will necessitate its buying those perishable products at such a price that it can store them and hope to make a profit, and that will lower the price temporarily, and perishable products can not stand the same sort of treatment that is given to the more staple products of the farm.

In addition to that, the conditions in a certain community where the producers are not well financed, where they have no help at the present time in the way of organization, might make it desirable for them to have a stabilization corporation, while that part of the industry which is well financed, which has its marketing organization perfected throughout the world, as we have in the apple industry, would be desirous of avoiding any Government interference.

The PRESIDING OFFICER. The Senate will receive a message from the House of Representatives.

PRINTING OF TARIFF ACT OF 1929

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House had adopted a concurrent resolution (H. Con. Res. 4) to print the tariff act of 1929 as reported to the House of Representatives, together with the report thereon, as a House document (H. Doc. No. 15), in which it requested the concurrence of the Senate.

Mr. MOSES. Mr. President, will the Senator from New York yield to me?

Mr. COPELAND. I yield.

Mr. MOSES. I would like to ask the Chair to be good enough to lay down the message just received from the House of Representatives.

The PRESIDING OFFICER. The Chair lays before the Senate a concurrent resolution from the House of Representatives, which will be read.

The Chief Clerk read as follows:

> *Resolved by the House of Representatives (the Senate concurring)*, That the bill (H. R. 2667) to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes, as reported from the Committee on Ways and Means to the House of Representatives on May 9, 1929, together with the text of the committee report, be

printed as a House document with the bill matter showing the existing tariff law in roman type; the part proposed to be omitted inclosed in brackets, and the new legislation recommended by the committee in italic type, and that 18,500 additional copies of the publication be printed, of which 12,000 shall be for the use of the House document room; 5,000 for the Senate document room; 1,000 for the Committee on Ways and Means of the House, and 500 copies for the Committee on Finance of the Senate.

Mr. MOSES. I move the concurrence of the Senate in the resolution.

Mr. ROBINSON of Arkansas. I assume that it will afford the copies required for a study of the bill, both by Senators and Representatives, and also by citizens who are interested.

Mr. MOSES. Yes, Mr. President; the subject has been very thoroughly discussed before the Printing Committees of both the House and the Senate.

Mr. OVERMAN. I should like to inquire of the Senator whether it will include the minority report?

Mr. MOSES. I understand so. I wish the resolution might have provided also for an index to the bill, but that has not been provided for, and I understand that an index has not been prepared.

Mr. ROBINSON of Arkansas. Does not the Senator think that the resolution could be held up a short time and that provision for an index could be incorporated in it?

Mr. MOSES. I wish very much that that might be done.

Mr. ROBINSON of Arkansas. I agree with the Senator that a bill of the volume of the tariff bill would be difficult to study without an index.

Mr. MOSES. I see the chairman of the Committee on Finance now in the Chamber, and no doubt he can throw some light upon the subject.

Mr. SMOOT. I was called out of the Chamber, and I did not hear the resolution read. May it be read again?

Mr. MOSES. It is merely a concurrent resolution to print the tariff bill as reported, together with the report.

Mr. SMOOT. The House has already made such an order.

Mr. MOSES. No; the Senator, from his experience on the Printing Committee, knows very well that the amount of money involved is provided concurrently.

Mr. SMOOT. I do not know whether the same rule applies with the Ways and Means Committee of the House that applies with the Finance Committee of the Senate, but in the Senate we are not bound by that law in the printing of tariff bills.

Mr. MOSES. The House, however, feels that it is, and therefore has passed a concurrent resolution to carry out this purpose.

Mr. SMOOT. I have the report made to the House, and also a copy of the bill as it was reported to the House, and I will say to the Senator that there is no index to it, but in the report every section of the bill is numbered just the same as in the bill, and an explanation of it given, and the provisions in the present law as compared with the bill as reported to the House are shown in the report. It is very complete, I will say to the Senator, but there is no index.

Mr. NORRIS. Mr. President——

Mr. MOSES. May I add, too, that it is proposed to print the bill in the form of a document, much less bulky than the printed form of the bill, but it will be printed page by page and line by line, and the text will be exactly as it is in the bill as reported to the House. But I do think an index should be added.

Mr. SMOOT. Then, if an index is to be added, and a request made now for the printing of it, or a separate index——

Mr. MOSES. I think, in order to facilitate the matter, we had better concur in the resolution. Then I will consult with the Senators who are interested in the matter, and offer another resolution later to provide for an adequate index, to be prepared under our auspices.

Mr. ROBINSON of Arkansas. I shall not object to that, but it does seem to me that the resolution itself might be amended now so as to require an index to be printed with this document.

Mr. MOSES. That is true, Mr. President, but we might have to wait a considerable time for the index to be prepared. The bill is very voluminous, and involves thousands of items.

Mr. SMOOT. And who will prepare the index?

Mr. MOSES. Personally, I would rather offer a separate resolution to have an index prepared by one of the experts of the Committee on Finance. Then we could have additional copies printed for the use of the House.

Mr. COPELAND. Mr. President, I will say that this volume comprising the tariff bill will be of no use without an index. I tried yesterday to find certain items in the bill in which I was interested. It is almost valueless without an index.

Mr. ROBINSON of Arkansas. Does the resolution provide for the printing of the minority report?

Mr. MOSES. I so understand it, Mr. President.

Mr. NORRIS. Mr. President, I want to suggest that this document will be practically useless if we do not have an index.

Mr. ROBINSON of Arkansas. Absolutely.

Mr. NORRIS. We already have copies of the bill, and we have all had experience already in trying to find some items in it. It will take a Senator half an hour to find something unless he just happens to hit upon it the first time he looks. The bill contains more than 400 pages, covering thousands of items, and I do not see anything to be gained by printing it now and getting an index afterwards, because in the meantime it will be of no value to anybody. It ought to be printed not only with an index, but the suggestion of the Senator from Utah ought to be carried out; we ought to have the comparative provisions shown. Where there is a change in existing law, it ought to appear. Then the compilation would be of some use.

Mr. MOSES. I agree to all that. As a matter of fact I do not know about the office of the Senator from Nebraska, but my office is being flooded with requests for copies of the bill and report which are not available. I understand from the Printing Committee in the House that that is the case over there and that the ordinary number of bills printed when a bill is introduced has been exhausted and it is necessary to have additional copies of the bill, and, of course, depending upon the point of view of the constituent writing, a copy of the report too. If we wait by amending the resolution to provide for an index it will be two or three weeks before copies may be prepared.

Mr. NORRIS. Would it take so long?

Mr. MOSES. It might, but I would hope not. I feel sure a Senate resolution which may be offered providing for a proper index by the Committee on Finance of the Senate, which is not now engrossed with the tariff bill, could probably be speedily carried forward. I ask the chairman of the committee if that is not so.

Mr. SMOOT. That is true. In answer to the Senator from New York, too, if he wants a good index that will help him find what is in the bill, I suggest that he take the tariff act of 1922 with the index. He will find that there are almost the same identical pages and every item in the whole tariff act of 1922 is indexed. That is a temporary suggestion.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator from New Hampshire yield?

Mr. MOSES. I have the floor by the courtesy and grace of the Senator from New York. I yield in the second or third degree to Senators who may so desire.

Mr. ROBINSON of Arkansas. I am very much interested in the statement just made by the Senator from Utah. If I understand it, he proposes to adopt temporarily the index prepared in 1922 for a different act, the act known as the Fordney-McCumber Act.

Mr. SMOOT. I simply suggested to the Senator from New York that he could find every item in the index, and while they are not on exactly identical pages, yet it contains every schedule in the present bill.

Mr. COPELAND. Mr. President, I would like to ask the Senator from Utah if he means to have us use the index of the last monstrosity and that every schedule in it has been increased in the present tariff bill?

Mr. SMOOT. Oh, no. The Senator said he could not find the items in the House bill.

Mr. COPELAND. That is true.

Mr. BARKLEY. Mr. President, is it not true that the index for the act of 1922 would be just as logical now as the bill which has been introduced and is now under consideration?

Mr. SMOOT. That may be true, and anyone who does not want an index to the bill itself might view it that way, but anyone who really wants to study the items would want an index, and that is what we are going to have.

Mr. BARKLEY. I wish to inquire of the Senator from Utah whether it is his policy as chairman of the Finance Committee to delay consideration of the bill by the Finance Committee until it is acted on in the House?

Mr. SMOOT. It is.

Mr. BARKLEY. I am informed that under the process which will be adopted in the other body the bill now introduced will be the bill as it will finally be passed by the House. I am wondering whether in view of that fact the Senator from Utah would not consider it wise to proceed in the Finance Committee of the Senate to consider the bill without waiting for its passage by the House, so as to facilitate its early consideration here and an early adjournment, which would otherwise be impossible.

Mr. SMOOT. The Senator from Utah is going to pursue the same course which has been followed by the Senate on all previous occasions. I doubt whether it would be appropriate at least for the Senate now to take the House bill as reported to the House, not knowing what changes are going to be made

there, and hold hearings upon it. In the past we have always waited until the bill came to the Senate and then have taken it up for consideration, and that is what I propose to do now.

Mr. KING. Mr. President, will the Senator from New Hampshire yield?

Mr. MOSES. I yield.

Mr. KING. I think the statement made by my friend from Kentucky challenges the good faith of the Republicans in the House.

Mr. MOSES. Mr. President, a point of order. We may not discuss here things that have taken place at the other end of the Capitol.

The PRESIDING OFFICER. The point of order is sustained.

Mr. KING. I am sure our friends in the House will allow legitimate debate; that there will be no cloture and no previous question, so that when the bill is considered in the House many of the infamies which exist in it will be excluded. There will be undoubtedly some progressive Republicans and some Democrats in the House who united may want to perfect the bill and send us a vastly different measure from that which is now presented to the House.

Mr. MOSES. I rejoice in the optimism of the junior Senator from Utah. Now I ask that the question may be put on agreeing to the resolution.

The PRESIDING OFFICER. The question is on the adoption of the concurrent resolution.

The concurrent resolution was agreed to.

Mr. MOSES. Mr. President, I now move that the Committee on Finance be directed to provide an index with comparative figures of rates for the bill H. R. 2667, of the Seventy-first Congress, first session, as compared with the existing tariff law.

Mr. KING. Mr. President, will the Senator yield?

Mr. MOSES. I yield.

Mr. KING. I have no objection and I concur that there should be an index, but I am wondering whether the House Committee on Ways and Means might not have prepared an index.

Mr. MOSES. We have no knowledge that they have done so. I am quite sure the experts assigned to the Committee on Finance, being now free from any detailed consideration of the tariff bill, can apply themselves directly to the preparation of an index and probably can get it ready for printing much more quickly than it could be done at the other end of the Capitol.

Mr. SMOOT. If the House has prepared an index, the Finance Committee never would undertake it.

Mr. SHORTRIDGE. Mr. President, I should like to make an inquiry of the Senator from New Hampshire.

Mr. MOSES. I yield for that purpose.

Mr. SHORTRIDGE. Is this index to be made of the bill as reported?

Mr. MOSES. As reported to the House. We have no other document upon which to proceed.

Mr. SHORTRIDGE. I think I know that; but is it to be made of the bill as it now stands or is it to await the disposition of the bill by the House?

Mr. MOSES. Oh, no, indeed; we can not wait so long.

Mr. SHORTRIDGE. That is my question. It is to be made now an index of the bill as it is before the House of Representatives.

Mr. MOSES. If it will help matters, I will add the word "forthwith" to my motion.

Mr. BARKLEY. Mr. President, will the Senator yield further?

Mr. MOSES. I yield.

Mr. BARKLEY. In the daily press of yesterday a part of an index was provided which compared the present bill with the Fordney-McCumber Act, and also the Underwood-Simmons Act, so that we have the previous two acts thus compared with the present House bill. Would it be possible for the Finance Committee to prepare a similar index?

Mr. MOSES. If the Senate desires to have a lot of ancient documents dragged out and thus indexed, we can not resist it if a majority of the Senate desires it.

Mr. BARKLEY. I understand some items of the present bill are even below the Underwood Tariff Act, and it might be a matter of great interest to make a comparison of those with the proposed law.

Mr. MOSES. Then, to use the language which was employed by the junior Senator from Utah, if, of course, the Senate desires that other monstrosities shall be compared with the splendid measure now presented for the relief of the American agricultural industry, I have no objection.

Mr. BARKLEY. If we are dealing with monstrosities, let us have them all.

Mr. MOSES. Yes; let us bring in the whole menagerie. I do not object.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield?

Mr. MOSES. I yield.

Mr. ROBINSON of Arkansas. Pending decision of the question, I would like to ask the chairman of the Committee on Finance when it is expected that the Finance Committee will begin consideration of the bill, and how long he thinks it will require the committee to submit its report to the Senate?

Mr. SMOOT. My hope is that the House will get through with the bill in two weeks. My further hope is that the Senate Finance Committee will hold hearings not longer than three weeks, and after the hearings are concluded there will not be a moment's time wasted in presenting the bill to the Senate.

Mr. MOSES. To the other optimist from Utah, the junior Senator from that State, I now wish to add the senior Senator from Utah. [Laughter.]

Mr. ROBINSON of Arkansas. Is there any reason why the Finance Committee can not proceed now with such hearings as it desires to hold?

Mr. SMOOT. Only the impropriety of considering a bill which has not passed the House and in which we do not know what the rates will be. I am informed there are to be a number of votes taken upon items in the bill in the House. Of course, more than likely they will be the important items and perhaps those which would have more applicants for hearings in the Senate than on the entire remainder of the bill.

Mr. ROBINSON of Arkansas. I do not share the optimism of the senior Senator from Utah.

Mr. McNARY. Mr. President, I make the point of order that the Senate is not in order. Let us have some order so that we may hear the discussion that is going on.

The PRESIDING OFFICER. The Senate will be in order.

Mr. MOSES. Mr. President, I yielded to the Senator from Arkansas to propound an inquiry to the Senator from Utah [Mr. SMOOT], which I assume has not been adequately answered. Therefore I will resume the floor and undertake to answer the Senator from Arkansas in behalf of the Senator from Utah by saying that, of course, the Senate Committee on Finance can not begin hearings on the bill before it comes to us from the House. Under the very able leaderhip of the Senator from Arkansas [Mr. ROBINSON] the Senate yesterday affronted the House in connection with another piece of legislation. I hope the Senator from Arkansas is not going to insist that it now affront the House again. As to the termination of the hearings which the Senator from Arkansas suggests, I can not undertake a prophetic rôle in spite of my name, but the fact is that the hearings will last longer than the senior Senator from Utah indicates.

Mr. ROBINSON of Arkansas. Mr. President, the mental processes of the Senator from New Hampshire are past comprehension. He has asserted that at my suggestion the House of Representatives was affronted by the Senate yesterday in refusing to vote out of the pending bill for farm relief what is known as the debenture provision. There is not the slightest foundation for that assertion. Any lawyer who studies the question, including the Senator from New Hampshire——

Mr. MOSES. Let me say that I am not a lawyer. I am not even a member of the bar.

Mr. ROBINSON of Arkansas. I do not know what the Senator from New Hampshire is. I was disposed to ascribe to him attributes and qualifications which he in his modesty admits he does not possess.

Any lawyer who studies the question will arrive at the conclusion that the so-called debenture provision in the bill has no relation whatever to that clause in the Federal Constitution which provides that "bills for raising revenue shall originate in the House of Representatives." Every court decision that has been rendered on the subject, every construction that has been placed on the question by political authority, leads to the conclusion that the so-called debenture provision is not a "bill for raising revenue." In three cases decided by the Supreme Court of the United States a bill for raising revenue within the meaning of that constitutional provision has relation only to the taxing power. Appropriation bills and bills which contemplate expenditures or withdrawals from the Treasury are not bills for raising revenue, and no strained construction can give it such a meaning as would warrant the statement here or elsewhere that the Senate by assuming to retain the provision to which I have referred has usurped the jurisdiction of the other body—the body at the other end of the Capitol.

I realize that there is a movement on foot to attempt to prevent a decision by the Congress on this question by resorting to a parliamentary ruse through which the body at the other end of the Capitol may be prompted to affront the Senate of

the United States by insisting upon an interpretation of the constitutional provision requiring that all bills for raising revenue shall originate in the House of Representatives that is neither warranted in fact nor in law. The Senate has just as much right to incorporate in the farm relief bill the debenture provision as would the body at the other end of the Capitol. No court has ever said that a "bill for raising revenue" comprehends or includes such a provision as is embraced in the debenture plan. Let us get that proposition clear now. Before this Congress shall adjourn the debenture plan will be voted on; Congress will express its will touching the inclusion or the incorporation of that method of farm relief. Capitalistic influence, great newspapers that have supported tariff protection, which in morals and in fact constitutes as much a subsidy or a bounty as does the debenture plan, having no grasp of the pitiable condition which prevails in the rural sections of this country, assuming to their favorites the right to continue to enjoy perpetually special favors and privileges under the law of this Nation, seek to characterize as unsound and unjust the application of principles closely analogous to that which they assert in behalf of industry.

Now we are told that a strained construction of the Constitution is to be made to prevent the representatives of the people from giving expression to their will, and the men and women of this country who have received little consideration from the political departments of the Government, those who need and deserve equality of treatment with capitalistic influences, the farmers of the Nation, are to be sent into the future without recognition of a fundamental principle which we ought to accept, no matter whether we be Democrats or Republicans. The unselfish purpose of everyone here ought to prompt him to extend to the farming population of the United States equality of rights and privileges with the industrial organizations of the country, and the press of the Nation, that part of it which has advocated the benefits of a high tariff, and men of wealth, in whatever sphere of industry, had just as well now recognize the fact that if the high wall which has been built about themselves and their riches through high tariff rates and the exploitation of the farming people is to be maintained, similar privileges, the same privileges to some degree, should be extended to those who need them most.

No one can make a joke of this subject. So far as I am concerned, it is a serious issue. I recognize that Congress has treated it lightly in the past; I anticipate that it may do so in the future; but there is one principle to which we should all conform, and that is the principle of equality of rights, opportunities, and privileges. When the Republican majority recognize that principle, instead of coming here with a 500-page bill, which constructs higher and higher and stronger and stronger the bulwarks behind which great wealth intrenches itself, they will do something calculated and designed to afford relief, quick relief, to those who have been the objects of our professed political solicitude throughout 10 years of agitation and of effort.

Mr. MOSES. Mr. President, the speech——

Mr. SIMMONS. Mr. President——

The VICE PRESIDENT. Does the Senator from New Hampshire yield to the Senator from North Carolina?

Mr. MOSES. I yield.

Mr. SIMMONS. I do not exactly see the necessity of the motion which the Senator from New Hampshire has made. I think the Finance Committee has always supposed that it had authority to have indexes prepared.

Mr. MOSES. Even of a measure in the House of Representatives?

Mr. SIMMONS. I do not know that we have ever gone that far. We probably have not had an index prepared for a bill prior to its passage by the House, because I think that would probably give rise to a great deal of confusion, which ought to be avoided.

I do not think we have anticipated the action of the other House, but when that body has acted, then we have had an index prepared, and I think we have full authority to do it now, either before or after the House of Representatives has acted. I do not, however, conceive that it would be quite the right thing for such an index to be prepared before action by the House. Of course, a temporary index might be of some advantage, but if it should be intended to be used permanently in the consideration of the bill it might give rise to a great deal of confusion in case the House should in any material particular amend the bill.

I think the Senator can trust the Finance Committee to attend to the matter pretty thoroughly. It has always done so heretofore; and I think it would be very much better practice, if the Senator will pardon me for expressing an opinion about it, to wait until after the bill shall have passed the House and shall have come over to the Senate and been referred to the committee. I am a little doubtful as to whether the committee would have authority, without a resolution of some kind, to have such an index as is suggested prepared before the bill had been referred to it. That is the only doubt I have.

If the Senator will pardon me, I wish to say a word further. The question of hearings has been raised. I myself have no objection, if the Finance Committee wants so to proceed, commencing the hearings right away, but I think before we begin to hold hearings we ought to know exactly what the other House has done.

Mr. KING. I agree with the Senator from North Carolina as to that.

Mr. SIMMONS. Again, I think it is ordinary courtesy to the other branch of Congress that we shall await their action before we begin to hold hearings about what they have done, because that is what the hearings will be about. The hearings will necessarily have reference to what the House has done, and to undertake to hold hearings before we know what the House had done I think would be out of order.

Mr. MOSES. Mr. President, this whole discussion has arisen from a simple motion which I made to concur in a resolution coming over from the House of Representatives. The suggestion that there should be an index to the tariff bill as reported to the House came from the other side of the aisle. I regret, of course, that the time of the Senate has been consumed in the consideration of so slight a matter. I content myself merely with observing that the remarks made by the Senator from Arkansas [Mr. ROBINSON], the victorious leader in the combat which came to its climax yesterday, will undoubtedly be repeated in the course of the debate which will take place here when the House politely returns to us the farm relief bill, as I am sure it will. Pending that, Mr. President, I withdraw my motion.

FARM RELIEF

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 1) to establish a Federal farm board to aid in the orderly marketing, and in the control and disposition of the surplus, of agricultural commodities in interstate and foreign commerce.

Mr. COPELAND. Mr. President, I am quite content to have the discussion go on. I have an engagement to speak in Ann Arbor, Mich., a week from to-morrow night, so I think between this time and that there will be ample time to discuss the various aspects of this bill.

I want to say to the Senator from Arkansas, in spite of the fact that I represent a section of the country not so vitally interested, that I am proud I had a part in voting as I did yesterday, even though I held my nose to do it. When there has been an opportunity to discuss with a business man or banker and to point out the importance of prosperity upon the farm as being precedent to prosperity in New York City, I have never yet failed to find him sympathetic to the idea. We can not sell the products of the cities, we can not sell the products of the manufactories and industries of this country, we can not keep labor employed, unless the great buying group of the country is in possession of funds to buy these products. Therefore we must find a way to make it possible to restore prosperity to the farm. I do not, however, want to see important industries of my city destroyed by including in this bill the fruits and vegetables which make up the great bulk of their transactions.

How are these fruits and vegetables marketed now? I am sorry that many of them rot on the tree or in the ground; but those that go to market are being handled in some effective way, and how is that?

Here is a letter that I have received from a great concern in New York City, distributors of fancy fruits and vegetables, one of the Washington Street group. I desire to quote a paragraph from the letter:

> There is just one thing I wish to bring very forcefully to your attention which will no doubt be interesting to you to learn—that practically 75 per cent of the fresh fruits and vegetables now produced in our country are sold f. o. b. loading station to various firms and operators throughout the country in our line of business; and very frequently these commodities are sold at a higher price f. o. b. loading station than it is possible to obtain later in the delivery markets after the car of merchandise arrives. Consequently, the merchandise is placed in storage. This applies particularly to such fruits as apples and pears, and such vegetables as celery, cabbage, onions, potatoes, etc.

Now, listen to this statement, the next paragraph of this letter:

> Now, with the Government contemplating going into the field and doing the marketing it is intended to do, there is grave doubt in the writer's mind that any dealer or distributor of perishable fruits and

vegetables would be willing to invest his money in any of these commodities when there is a possibility that the Government agencies would have control over a large portion of these perishables to throw them on the market at any time, which could and would tend to demoralize market conditions.

Mr. EDGE. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from New Jersey?

Mr. COPELAND. I yield to the Senator from New Jersey.

Mr. EDGE. I want to be entirely clear on these two pending amendments—the one offered by the Senator from New York and another one that is pending, offered by the Senator from Washington [Mr. JONES]. As I understand, if the amendment offered by the Senator from New York is adopted by the Senate, inserting the words "as used in this act, the words 'agricultural commodity' mean an agricultural commodity which is not a fruit or a vegetable," it would, in effect, absorb the amendment offered by the Senator from Washington, and there would be no necessity to consider that amendment.

Mr. COPELAND. That is correct. If my amendment is adopted, it will exclude from the operation of the bill all fruits and vegetables but will leave section 9, which provides for clearing-house associations in the event of necessity. So, as the Senator has suggested, it would absorb the amendment of the Senator from Washington.

When interrupted, and properly so, by the Senator from New Jersey, I was about to ask, Are we willing to have these great commission concerns and produce concerns ruined by passing a bill which they fear will destroy them if enacted into law?

I have gone as far as any Senator in this body through the years I have been here to help the farmer. In doing so I have done what many of my colleagues have wished me to do; but I say to you, Senators, that if this bill is enacted as written, the great commission merchants and produce dealers of the great cities of this country—not alone the city of New York, but Chicago and Cleveland and Cincinnati and Pittsburgh and Kansas City and every other city—will be destroyed.

Mr. BLAINE. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Wisconsin?

Mr. COPELAND. I yield to the Senator from Wisconsin.

Mr. BLAINE. I should like to inquire of the Senator if it is not more dangerous for the producers to join the clearing-house association than it is to join the stabilization corporation, assuming that there is any danger in joining either one of them?

Mr. COPELAND. My judgment is that we are dealing with an entirely different thing when we deal with the clearing-house association. If the Senator will read the top of page 18, line 2, he will see that it says this:

> Cooperative associations handling the commodity, independent dealers, handlers, and/or distributors of the commodity shall be eligible for membership in the association.

If an emergency arose where the board deemed it advisable to interfere or interpose in the proper way in the matter, they would be prepared, under this section of the bill, to deal with these concerns I am talking about.

Mr. BLAINE. Mr. President, will the Senator yield again?

The PRESIDING OFFICER (Mr. FESS in the chair). Does the Senator from New York further yield to the Senator from Wisconsin?

Mr. COPELAND. Certainly.

Mr. BLAINE. My own conviction is that perhaps section 9, providing for clearing-house associations, should be stricken out, and that the section relating to stabilization corporations ought to be amended to the effect that no stabilization corporation should be organized unless the cooperative associations handling, we will say, 50 per cent or more of all the commodity that is cooperatively marketed made a request to join.

Mr. COPELAND. There is more sense in that. I shall be very glad to study a proposal of that sort.

Mr. BLAINE. I was going to suggest to the Senator that it is my intention to submit an amendment to provide for that condition.

Mr. COPELAND. I shall be very much interested in giving thought and study to it.

Mr. WAGNER. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to his colleague?

Mr. COPELAND. I do.

Mr. WAGNER. As I understand the objection made by those interested in the amendment that my colleague offers in regard to perishables—and the objection is well grounded, in my view—it arises from an apprehension that the producers of a small percentage of a particular commodity might organize into cooperatives, and then make application for and secure the formation of a stabilization corporation, and create competition between those in the corporation and the producers of the larger portion of the commodity who are out.

Mr. COPELAND. That is well stated.

Mr. WAGNER. Would not that be absolutely cured—and I am supported in my contention by those who are interested in this question—if the Senate should incorporate in the bill an amendment which I have proposed, which I think the Senator has had a chance to study, which provides for the formation of one stabilization corporation, a quasi-public corporation, which will be the only stabilizing corporation handling all of the commodities included in the pending legislation. You would not then have to question how much of the commodity is represented within the stabilization corporation and how much is without? It would be a single corporation handling all of the commodities, and the Government would not only provide the money, which it does provide, but would also control the use of the money. Would not that absolutely cure the situation?

Mr. COPELAND. There is not any question about it.

Mr. McNARY. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Oregon?

Mr. COPELAND. I yield.

Mr. McNARY. The Senator makes a very interesting observation. What form of force would he employ to bring all of the producers within the stabilization corporation?

Mr. WAGNER. It is a quasi-public corporation which takes charge of the business of disposition and control of the surplus of the different commodities as a business corporation and on its own account.

Mr. McNARY. Is the Senator dealing only with the surplus?

Mr. WAGNER. Is not that the purpose of a stabilization corporation—to influence the price of the commodity for the protection of the farmer?

Mr. McNARY. That is one of the purposes, but only one. I have not read the Senator's amendment, but I am interested in it. I understand that it would attempt to impress upon these cooperative organizations and all producers the necessity of grouping themselves into a quasi-public corporation.

Mr. WAGNER. That is not the purpose of the amendment. I do not interfere with the organization of cooperatives for the purposes described in the bill, such as the building of storage facilities and other respects in which the cooperatives are to be assisted under the pending legislation; but I say that the stabilization corporation which is to influence the price of the commodity by controlling the surplus ought to be a corporation which represents all of the commodities included in the present legislation.

Mr. McNARY. I am curious to know how the Senator would embrace all of the producers of a commodity. Would he compel them to come in?

Mr. WAGNER. No. The corporation deals in the commodity. The commodity is upon the market. The farm board is apprised of the situation.

Mr. McNARY. I am trying to get the Senator to distinguish between his proposal and the stabilization corporation that will function under the terms of this bill. That is one of its purposes.

Mr. WAGNER. The difference is this: In the first place we are sure of having a stabilization corporation under my amendment, but we are not sure that we shall have any stabilization corporations under the bill as it stands.

Mr. McNARY. Then the Senator makes it mandatory in some fashion that a stabilization corporation be created, whether or not it is the desire of the producers to have it done?

Mr. WAGNER. Yes; but it does not act unless the conditions of the market justify it in acting.

Mr. McNARY. Who determines that—the board?

Mr. WAGNER. The board.

Mr. McNARY. Then, would the board have a right to compel every producer to come in and take away from him his initiative in the way of marketing his product?

Mr. WAGNER. Not at all. The corporation does not interfere with the producer in marketing his crop. It purchases and sells the surplus of the commodity in order to stabilize the price; and if there is not any surplus, or if there is no reason for the intervention of the corporation as determined by the members of its board of directors, then it does not act.

Mr. McNARY. I want to know what is the difference between the Senator's idea and that expressed in the language of the bill.

Mr. WAGNER. There is only this difference: Under the amendment which I propose there is an assurance of the crea-

tion of a stabilization corporation. We do not have to wait for the application by cooperatives which may or may not be formed. Secondly, under the bill I think everybody concedes that the Government will supply all the money for the operation of the stabilization corporations without having any control. Under the plan which I have proposed the money is to be furnished by the Government, but the utilization of the funds is to be under the control of the responsible officials of the Government.

Mr. KING. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. KING. The statements just made by the junior Senator from New York, together with the interrogatories propounded by the chairman of the committee, reveal some of the uncertainties of the pending bill and demonstrate the confusion which exists in regard to its scope and effect. The more the bill is studied, the more its weaknesses are revealed. That it is economically unsound is the opinion of many who have examined it sympathetically with a view to finding its merits and with the hope and expectation that it will ameliorate the condition of agriculture and prove of benefit to the farmers.

The numerous amendments which have been offered indicate the fears that many friends of the measure entertain as to its soundness and effects when put into operation. Communications from all parts of the United States reveal the conflicting views of the people in regard to the bill and demonstrate that a considerable part of those engaged in various branches of agriculture do not desire to come within the provisions of this measure. Many dairy organizations and cooperatives are unwilling that the bill shall be applicable to them, and Senators are receiving hundreds of letters and telegrams from fruit and vegetable growers protesting against being included within the provisions of the bill.

There are many agriculturists who regard the bill as being unsound as well as unjust in that it seeks, as they think, to coerce them into the membership of cooperatives and to force the latter into stabilization corporations. If I correctly interpret the position of the junior Senator from New York, he would prevent a multiplicity of stabilization corporations and establish a giant, omnipotent organization to control the products, or at least the surplus, of agriculture. If I understand him correctly, his view is that a governmental organization should be formed to take care of all surplus agricultural commodities, which means, of course, to purchase them from the producers and, of course, at prices that will be above world prices. This organization would, in effect, fix prices by taking from the market all surplus agricultural products, thus fixing a high level of prices for the products sold in the domestic market.

Obviously a Federal organization to accomplish this task must be sufficiently powerful to practically control all agricultural products. And to control them it must mean their supervision under all conditions and for all purposes. The United States is too large, its interests too diversified, and its agricultural products too numerous in variety and too stupendous in quantity to be successfully and economically controlled by a Federal corporation or a quasi-governmental agency.

The Bolshevik government of Russia attempted this plan. It sought to bring all the farmers and their products under the control of the Government, which was to provide for the distribution of all products and make provision for the export of all surplus commodities. Agriculture withered under this blight, and the Soviet régime is now compelled to import grain to supply the necessities of the people, notwithstanding the fact that within Russia are millions of acres of most excellent agricultural lands.

The provisions in the bill for stabilization corporations are pointed to with considerable enthusiasm by some of the proponents of the bill. Just how the stabilization provisions will operate has not been clearly elucidated by Senators supporting this bill. It is contended by some that there should be but one stabilization corporation for each commodity. This view, in my opinion, raises a multitude of conditions and factors that vitally affect the problem involved. A stabilization corporation organized at the instance of the apple growers of Virginia would utterly fail to meet the situation of the apple growers in other parts of the United States. Agricultural conditions in New Hampshire are different from those in California. The vastness of our country, the differences in climate, the question of transportation with the varying costs of conveying to domestic and foreign markets products of field and farm, the infinite differences incident to the production and distribution and transportation and marketing, involving wide variations in costs—these, and a multitude of other factors, create a situation which precludes the formation and execution of uniform policies, rules, and practices to govern all sections of our country.

It has been suggested that there should be a stabilization corporation for apples, another for peaches, still another for lettuce, and for each vegetable and fruit, as well as each agricultural product. How would it be possible to set up a corporation to deal with every kind of fruit and vegetable and agricultural product? A stabilization corporation set up at the instance of the growers of alfalfa in the Imperial Valley could not apply any uniform rule or procedure to the New England or Southern States or to the Mississippi Valley States which would meet the situation in lower California. The problems of the fruit growers of Florida are entirely different from those of California. The people of Illinois would be unwilling to have a stabilization corporation created, at the instance of the people of Texas or Massachusetts, to exercise the authority conferred by this bill upon such corporation, over products of the same character produced in Illinois; and it is certain that agriculturists who may approve of the general provisions of the bill would be unwilling for a limited number of persons residing in a restricted area of the United States to set in motion the forces which would culminate in the organization of a stabilizing corporation.

Protests have been made to me against the provision of the bill, as interpreted, which permits these stabilization corporations to be set up by a minority of agriculturists producing a commodity which is to be the basis of such corporation. I have been asked to offer or support amendments that will prevent stabilization corporations being formed until at least 60 to 75 per cent of those producing the agricultural product which is to be brought within the operating provisions of the stabilization corporation have petitioned for the organization of such corporation.

There are many who believe that if this measure is put into operation it will destroy existing cooperatives and some organizations which are materially benefiting farmers, and which, if not destroyed by unwise legislation, will increase in strength and influence and thus be able to render still greater service to American agriculture. The belief is further entertained by some that the provisions of this bill, particularly if not wisely and justly administered, will constitute obstacles to individual initiative and to the creation of additional agricultural operating units, organizations, and cooperatives. There is also a fear of bureaucracy, of governmental favoritism, of the effects of a possible, if not probable, competition between organizations operating under the countenance of the Government (and with capital supplies by it) and individuals or independent organizations. It is thought by some that this situation will create resentments and prevent initiative and that fine spirit of individualism, which has contributed so much to our country's development, and which is essential to its prosperity and welfare.

I submit that farmers of courage and independence and initiative, who have made a success of their business and who feel competent to manage their own affairs, may have some justification for doubting the wisdom of this bill, and reasons for entertaining fears as to its effects upon them as well as agriculture generally.

Mr. President, the board created by this bill is given most extraordinary powers. They can create a bureaucracy and a machine all-powerful, that would injure the farmers as well as the country generally. However, in the time of the Senator from New York [Mr. COPELAND], who has courteously yielded, it would be improper for me to further trespass upon him or upon the Senate. I was prompted to take the floor for a moment because of the remarks of the junior Senator from New York and the amendment which he says he will offer. In my opinion, the adoption of that amendment would be most unfortunate. The bill is imperfect and confusing and oppressive in its present form. It would be more objectionable if the amendment suggested were adopted.

This bill, if it should become a law, will prove most disappointing to the farmers and it will, in my opinion, call for many explanations upon the part of some who have loudly clamored for farm relief, and have joined in offering to the American farmer, and to the country, the pending measure as a perfect and finished product of American statesmanship. With the debenture provision eliminated, as I believe it will be, I may vote for it, but I shall do so with reluctance, and only because, as it appears, no other measure has any chance of passage, and because the agriculturists generally believe that it has some virtues and will contribute to the alleviation of their financial difficulties.

Mr. COPELAND. Mr. President, I have been very much interested in this colloquy. In my judgment, my colleague has

presented a very notable contribution to the solution of this question. Of course, I think probably the Senator from Oregon [Mr. McNARY] and I would want to add the equalization fee, and charge against any crop the expense of handling that particular crop. With that I believe my colleague's would be a model bill. It is a good bill now, and I shall be very happy when it is presented to vote with my colleague.

Mr. WAGNER. Mr. President, will my colleague yield?

Mr. COPELAND. I yield.

Mr. WAGNER. On the question of proposing the amendment now, I have reached the conclusion that that would be a futile gesture, because my bill is a substitute for the pending bill, and it does not include the so-called debenture clause, and since the Senate has acted in favor of the debenture clause, it has answered me in the negative.

Mr. COPELAND. Mr. President, with the exception of this particular thing, there is no difference of opinion between my colleague and myself.

Mr. McNARY rose.

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Oregon?

Mr. COPELAND. I yield to the Senator from Oregon.

Mr. McNARY. I recall my request.

Mr. COPELAND. I am always pleased to yield to the Senator from Oregon. I think we fail to appreciate the sacrifices made by the Senator. I have seen him day after day, week after week, in this session and in other sessions, year after year, sitting here patiently praying and hoping that something might be done to relieve the farmer. While he was not for the debenture, yet, with the addition of that to the House bill, perhaps it makes the House bill worth while, but without it, as I said the other day, in my opinion the House bill is not worth $36 a thousand.

Mr. FLETCHER. Mr. President, may I interrupt the Senator?

Mr. COPELAND. Certainly.

Mr. FLETCHER. I know that under the provision of the bill it is optional as to these various commodities whether they come in or stay out, but it is urged that those who are in will have some advantage over those who are out. What I want to know is why that is the case. Why is it that those who decline to come in under the provisions of the bill will be adversely affected if they do not? I understand the Senator to argue that the commission houses and great distributors in the cities will be destroyed. I would like to know why that is the case. I can not quite agree with that definite conclusion unless I am given some reason why that is so.

Mr. COPELAND. I wonder if I can give an effective answer. The Senator must bear in mind that as regards fruits and vegetables, the perishables, their production is a business which is being carried on now by cooperatives, but much more largely by private enterprise. I read just now a letter from a prominent merchant of my city pointing out, as the Senator will recall, that 75 per cent of the fresh fruits and vegetables are handled now by produce men, commission men. Three-fourths of the fruit and vegetable business is done by commission men.

While there are a few very successful cooperative associations—I suppose the citrus fruit association is one, and we have spoken about the dairymen's league, and there is an apple growers' association—while there are a few very successful cooperatives, the quantity of produce which they handle is a very small proportion of the business now being done in those commodities.

Let us assume that the figures I gave are correct, that 75 per cent are handled by private concerns. It takes a lot of money to finance them. As the Senator knows better than I, we export large quantities of apples to England, and we export enormous quantities of apples to South America. Much of the money which is used to carry on that business is foreign money, money advanced by foreign bankers.

This is what will happen, in my judgment, if these commission men are right: If the Government undertakes to go into the business—suppose it should decide that it will handle apples or pears or onions or some other products—the private merchant at once says, "I can not afford to take any chance. I can not afford to buy any of these things. My bankers refuse to advance any money, because how do we know what this governmental body is going to do with those products after they have purchased them? They may dump them on the market, necessarily when the market is good, and glut the market, and by reason of the decline in the values the private individual is ruined, while the governmental body has all the funds of the Government at its disposal." There is the point.

Mr. FLETCHER. Do I understand the Senator to say that these cooperative associations now existing, for instance, do their own marketing and distribution? Do they not now patronize the same distributing agencies?

Mr. COPELAND. Some do; while others, on the other hand, ship direct to Europe. Many of them now employ these agencies.

Mr. FLETCHER. Does the Senator contemplate that if the Government undertakes to dispose of this surplus, the Government itself will establish its own agencies rather than patronize existing organizations and concerns?

Mr. COPELAND. I have no doubt of that. Let us take that other matter in which the Senator and I are interested, the matter of the merchant marine. We would not have thought it was conceivable, when we were operating the United States Lines, that we should make use of the Cunard Line offices or some other steamship offices. We established our own agencies, our own advertising agencies and ticket offices, and the various departments of business industry needed to push forward the United States Lines. Similar methods would be employed in regard to these commodities. I can not think for a moment that a governmental agency would make use of these private institutions. It is not right that we should subject them to the possibility of annihilation.

Let me read for the RECORD, and for those who may be interested, a telegram from a concern known as the South American Fruit Exporters' Association. It is a New York corporation. It represents shippers of 700,000 packages of apples. Just think of it, 700,000 packages of apples are shipped by this association each year to South America. They—

urgently request that apples and pears be excluded from pending farm relief bill. Feeling in South America already most antagonistic against continued importations of American apples, on account of Agricultural Department restrictions on importation of South American fruits. If apples and pears included in farm relief bill, members of our association must withdraw from continued shipment as the danger of the stabilization agency dumping supplies of apples in South America would not permit us to continue our business in the exportation of apples which we must purchase outright from growers in the United States.

What do these produce agencies do? They go out to my farm. My place is about 30 miles from New York, and I have several hundred apple trees. They buy the crop on my trees, not this concern, but some concern; I would not for the life of me know what concern, but somebody buys the crop. They say, "We will give you so much for your crop," or "We will give you so much a bushel for your crop," and they take charge of it.

They pay me. I do not know where they get the money, but I get my money. Then they go on with their transaction, and I assume they make money out of it. There are hundreds of such commission organizations in my State, and they are unanimous in their opposition.

For the sake of the RECORD I will recite the fact that I have here many telegrams of protest. For instance, let me read this one:

NEW YORK, N. Y., *May 2, 1929.*

Hon. ROYAL S. COPELAND,
Senate Office Building:

Respectfully ask you vote for elimination fresh fruits, vegetables, from Senate bill No. 1 because their perishable character requires marketing system which should not be disturbed, making hardship our industry rather than relief which is contemplated by the bill. We believe this industry should be eliminated from the bill.

W. O. AND H. W. DAVIS (INC.).

It very often happens and most of the time happens in effect, that the American price of these products is equal almost to the world price. In other words, where the commission merchants operate successfully the producer of the food product is not disturbed about it because he knows he gets as high a price, certainly, as he could if the Government handled it. Following that is a similar expression from Danziger Bros. & Rubin and many others. I will read this one:

NEW YORK, N. Y., *May 1, 1929.*

Senator ROYAL S. COPELAND,
United States Senate, Washington, D. C.:

As extensive exporters of apples and pears we urge you to act excluding these commodities from farm relief bill as so-called stabilization corporations financed at Government expense particularly dangerous to both export and domestic market; also other provisions of bill.

DANZIGER BROS. & RUBIN.

Let me read just one further telegram before I submit a request with reference to the others:

NEW YORK, N. Y., *April 30, 1929.*

Hon. ROYAL S. COPELAND,
United States Senate:

We have been engaged in the business of exporting fresh apples and pears for over 50 years, and during that time have watched the busi-

ness grow from practically nothing up to its present proportions of 11,000,000 boxes and 2,500,000 barrels exported this season from the United States. This accomplishment of years will certainly be destroyed if the stabilization feature of the farm relief bill is exercised with respect to these commodities. You have but to place yourself in the position of the foreign buyer to realize the consequent disruption of normal markets. Would you as a buyer enter into forward contracts where the possibility always exists that foreign markets will be used as a dumping ground for surplus? Any disruption of foreign markets will upset domestic values in consequence. Sincerely wish that these commodities, in fact, all fresh fruits and vegetables, could be eliminated from provisions of the bill.

E. W. J. HEARTY (INC.).

I now ask that the names of the senders of the other telegrams and letters to which I have referred be noted in the RECORD. They are of a somewhat similar trend of protest against the proposal.

The PRESIDING OFFICER. Without objection, it is so ordered.

The names are as follows:

Daily Bros. (Inc.), of Rochester; Paul Judson, president New York State Horticultural Society, of Stuyvesant; the Albion Cold Storage Co., of Albion; the Growers Cold Storage Co. (Inc.), of Waterport; S. H. and E. H. Frost, S. Gobel & Day, C. C. Hess & Co., John Nix & Co., C. I. and M. Dingfelder, The Kimball Fruit Co (Inc.), Simons Shuttleworth & Franch, H. J. Lutten & Son (Inc.), Herschel Jones Marketing Service, Harry Bartling, Olaf Hertzwig Trading Co. (Inc.), Robert T. Cochran & Co., International Fruit Exchange, Natale and Frank, S. Goldsamt (Inc.), H. E. Schwitters & Sons, Paxton Rivers Co. (Inc.), Dan Wuille & Co. (Inc.), Alfred Aldridge, A. E. Meyer & Co., J. H. Schneider & Co., S. H. and E. H. Frost, L. Van Bokkelen, Cochran Turney Crispo (Inc.), L. Casazza & Co., Richman & Samuels (Inc.), T. A. Watson & Co., Egan Fickett Co. (Inc.), Miller Cummings Co., J. Hamburger & Co., N. A. Stewart & Co., P. Martori (Inc.), S. Cohen & Co., Paxton Rivers Co. (Inc.), and Victor L. Zorn Co. (Inc), all of New York City, in the State of New York; E. L. Roberts, of Baltimore, Md.; Merrin Cravens Co., of Atlanta, Ga.; E. T. Butterworth, advisory council, Active Past Presidents International Apple Shippers Association, of Philadelphia, Pa.; D. E. McGlasson, president The Texas Wholesale Fruit and Vegetable Dealers Association, of Waco, Tex.; O. Furbringer, president M. Longo Fruit Co. and the Cicardi Bros. Fruit & Produce Co., both of St. Louis, Mo.; and E. L. Roberts, acting secretary-treasurer joint council, National League of Commission Merchants of the United States, Washington, D. C.

Mr. COPELAND. Last year we exported from the United States vegetables and fruits and nuts of a money value of $143,600,000. Last year we exported canned and preserved goods amounting to $677,131,000. We exported of canned vegetables and fruits $66,429,000. I have given figures representing almost a billion dollars of fruits and vegetables and products that are now being handled largely by commission merchants.

Senators, in our efforts to help the farmers of America do we intend to strike a blow at one of the great industries of the cities in America? I do not believe that any farmer in the United States of America desires to be benefited at the expense of the merchants of the cities. I think I could subordinate my desire to serve my own constituency if it could be pointed out that the farmers of America actually are to be benefited by the pending bill, but when we are dealing with fresh fruits and vegetables, perishables, we are dealing with products entirely different from wheat and corn and cotton and the stable agricultural products.

We require warehouses and refrigeration and intricate handling of the perishable to keep them good. Do you know, Mr. President, what it means to preserve these perishable products? There must be a temperature not in excess of 50° at any time or the germs of disintegration and spoilage will thrive in the product. The products have to be kept all the time in a temperature below 50°. It costs money to buy ice and electricity and the other elements used to refrigerate the products.

Many of the commission houses have existed for years. One man whose telegram I read is a member of a firm which has been in existence over 50 years, buying products from the farmers, from the gardeners, from the orchardists, buying their products for cash. They have been processing and preserving and selling their products abroad—nearly a billion dollars' worth last year.

Farm relief? Yes. The able and genial Senator from Oregon [Mr. MCNARY] will testify that I have stood here ever since I have been a Member of the Senate and fought for farm relief. Am I right in that statement?

Mr. MCNARY. Mr. President, I think it is so generally well known that it is not necessary for me to make any extended comment, but inasmuch as the question has been asked of me, I will say that in the many activities I have been forced to undertake as chairman of the Committee on Agriculture and Forestry of the Senate I have always found the Senator from New York most capable, able, and sympathetic, and it is pleasing to note that one coming from a great metropolitan city like New York has the vision he possesses.

Mr. COPELAND. I am very much obliged to the Senator. Of course, his statement is very nice, even if I had to extract those words of praise from an authority so great. But the point is that I want to make it clear for the RECORD, if it shall be read by anybody who does not know it, that I have stood here on the floor of the Senate year after year and tried to help the farmer, but I do not want to be repaid in that service to the farmer by an attack upon the cities of my State. This industry happens to be centered largely in the city of New York, but it is active in every city in the United States. Commission and produce merchants are found in every city in the country and when you strike a blow at that industry you strike a blow at every city in our country.

My contention is that there is no need to connect up with wheat and corn these perishable products which should not be and never can be and never have been handled in the same way that the substantial and stable products of the farm are handled. The problem is entirely different. I know there are Senators from certain States who feel that somehow or other they are going to get an advantage for their vegetables and their fresh fruits, that somehow or other, by some magic unknown to me so far as its power is concerned, such products are going to be made more valuable and the income of the growers greater. I can see nothing of the sort. I can not see how by the inclusion of these articles in the bill any grower of vegetables or fresh fruits will be benefited, but, on the contrary, if the commission merchants and produce dealers are ruined, the producers of vegetables and fresh fruits will be ruined because the major crops of wheat and corn and cotton, the stable products, will be the ones first to be handled. All the time the fear that the perishables may be included in the operations of the board will ruin the industry and the goose that lays the golden egg will die.

Mr. President, I do not know that there is anything more I can say. I do make this plea: Somebody who reads the RECORD will get it, although very few here may be influenced by it. I beg of you, Senators, in your enthusiasm to benefit and aid the downtrodden agricultural group of the country, an enthusiasm which I share, do not destroy at the same time this great industry in the cities of America. We of the cities make sacrifices for you. Who can doubt that if the price of wheat is stabilized at a price sufficient to pay the cost of production to the farmer and give him a profit, both of which he is entitled to receive, that out of that will come higher costs to the consumers of America? I am glad to see that the American Federation of Labor and the people representing the laboring groups have indorsed the bill.

We are willing to make sacrifices in the cities. Those of us who live in the great cities and recognize the necessities of the farm are willing to make the sacrifice and pay more if need be for the farm products. But I beg of you when you are voting to help the farmer, the producer, do not forget the consumers in our cities, the men who work for the great commission houses and the great produce establishments. Do not forget that the prosperity of our cities depends largely upon the prosperity of those industries. I ask you in your voting to bear in mind that we in the cities have our rights and our problems, too, and so I hope that the Senate in its wisdom will see fit to adopt the amendment which I have presented.

Mr. LA FOLLETTE. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Allen	Frazier	La Follette	Simmons
Ashurst	George	McKellar	Smoot
Barkley	Gillett	McMaster	Steck
Bingham	Glass	McNary	Steiwer
Black	Glenn	Metcalf	Stephens
Blaine	Goff	Moses	Swanson
Blease	Goldsborough	Norbeck	Thomas, Idaho
Borah	Gould	Norris	Thomas, Okla.
Brookhart	Greene	Nye	Townsend
Broussard	Hale	Oddie	Trammell
Burton	Harris	Overman	Tydings
Capper	Harrison	Patterson	Tyson
Caraway	Hastings	Phipps	Vandenberg
Connally	Hatfield	Pine	Wagner
Copeland	Hawes	Pittman	Walcott
Couzens	Hayden	Ransdell	Walsh, Mass.
Cutting	Hebert	Reed	Walsh, Mont.
Dale	Heflin	Robinson, Ark.	Warren
Deneen	Howell	Robinson, Ind.	Waterman
Dill	Johnson	Sackett	Watson
Edge	Kean	Schall	Wheeler
Fess	Keyes	Sheppard	
Fletcher	King	Shortridge	

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

Mr. JOHNSON. Mr. President, the amendment which has been presented by the Senator from New York [Mr. COPELAND] and one which subsequently will be presented are, in my opinion, of very grave importance in respect to the pending bill and its ultimate purposes. The measure is presented here to aid a languishing industry. It is presented upon the theory that it is absolutely essential that something be done by the Congress in order that agriculture and agricultural commodities shall be rehabilitated and shall receive something of the justice which it is asserted has been so long denied them. To my mind it is an entirely illogical proposition when a bill accords a privilege to the various agricultural commodities which are to come under its provisions to say that any one or any number or any corporate aggregation of producers of a particular commodity shall have a veto power upon all others who are engaged in the production of that agricultural commodity to prevent them coming under the provisions of the bill.

In the first place, let me remark that the bill is optional in its character. It is optional in that it compels no organization and no aggregation and none of those who are engaged in the production of a commodity to come under its provisions; so that those who desire to participate in what are asserted to be the benefits of the bill may come under its provisions if they desire, and those who do not want to be affected by the provisions of the bill are to be at perfect liberty to remain outside its provisions and not to participate in the slightest degree in its terms. This, it would seem, should be ample for the entire industry and for every commodity. I repeat that if any one group engaged in the production of any commodity may deny the others who are engaged in the production of that commodity the right to participate in the benefits of the measure, then we shall have enacted a measure that will be of no benefit at all, because any one or any number of the producers of all the commodities embraced within the bill might with justice demand the like exemption, and demanding the like exemption for themselves, put upon every other individual and every other aggregation and every other corporation and every other cooperative engaged in the production of that commodity an embargo so that they could not in any degree participate in whatever benefits may be derived from the provisions of the measure.

I say, therefore, first, it is wholly illogical that there should be exempted from the provisions of the bill certain commodities, thus denying to individuals or to cooperatives engaged in the production of those commodities the right to participate in the benefits that it is asserted will be derived from this bill. It is a wholly illogical situation thus to present to us, and it becomes increasingly so and emphatically so when there may be differences of opinion among those engaged in the production of any particular commodity.

The Senator from New York states that in seeking to exempt from the operation of this bill all varieties of fruits and all vegetables, he is acting in accordance with the desires of some of his constituents. Quite the contrary is the fact with the constituents of the many of the rest of us. We say to him, in respect to those people who do not want to participate in the measure at all, "Remain outside if you desire; nothing compels you to become either a member of a stabilizing corporation or of a cooperative under the bill; you may do exactly as you see fit"; but we further say to him, our people wanting to join in what may be developed under the bill, "Do not, because you want to stay out, deny us the privilege to come in." It seems to me that is unanswerable, sir, from any standpoint.

Another amendment will ultimately be presented upon which we may argue another proposition as presented by the distinguished Senator from Washington, but suffice it for the amendment presented by the Senator from New York. He takes two generic names. He says that the bill shall not mean either of these, either fruits or vegetables, and therefore, because there are some producers of fruits or vegetables in isolated portions of the State of New York, responsive, perhaps, to the business of the State of New York, who do not desire to be embraced within this measure, all fruits and all vegetables, then, in the United States of America shall be denied the privileges under the bill. If there be anything in his argument at all, it is an argument against the entire structure of the measure rather than against the particular inclusion of those who want to be included in the designated categories.

I submit, therefore, that the amendment of the Senator from New York ought not for an instant to be entertained by the Senate.

Mr. WALSH of Montana. Mr. President, I should like very much indeed, if I could, to find myself aligned with the distinguished Senators from the State of Washington and the State of New York and the State of Pennsylvania with reference to the particular question that is now before the Senate. I have been, accordingly, endeavoring to follow the line of argument to ascertain, if I can, what injury is likely to come to the apple growers, for instance, in those various States by reason of this legislation.

Thus far I have been unable to ascertain from what has been said what injury is likely to ensue by according the privileges of this bill to those engaged in the apple industry, for instance, in other sections of the country who desire to avail themselves of its benefits, if there are any.

Mr. McNARY. Mr. President——

The PRESIDING OFFICER (Mr. GOFF in the chair). Does the Senator from Montana yield to the Senator from Oregon?

Mr. WALSH of Montana. I yield to the Senator from Oregon.

Mr. McNARY. Probably I am not best qualified to answer that question. As chairman of the committee I have received very many telegrams from apple growers and cooperative associations dealing in apples and canning them in opposition to the bill so far as it appertains to apples and pears. The central thought as expressed in these wires is that these agencies are not afraid of any provision of the bill other than that which is comprehended under the provision that specifies a stabilization corporation, and only particularly with reference to the handling of the surplus of apples and pears.

We all know that probably the greatest market for apples and pears in the raw state, particularly apples, is in England. There they have agencies which they have created after very many years of experience and toil which have proven very satisfactory for the purposes of distribution. They fear that a stabilization corporation in handling the surplus would not employ these agencies that they have created and would more or less injure them eventually and disturb the marketing conditions that now obtain, and for that reason they want to be excluded from any power the stabilization corporation might have with respect to the foreign trade and the surplus involved therein.

I can see some logic in that proposition.

Mr. WALSH of Montana. I think I can, too; but perhaps I do not arrive at just exactly the same conclusion at which the Senator from Oregon does. Let me indicate the line of thought that it suggests to me.

In the State of Washington the apple business is carried on on a very large scale, as it is in the State of Oregon and in the State of New York. These organizations have been established, and, as indicated, they carry on a very extensive business. They have been able to finance their operation successfully and to establish themselves upon a perfectly safe basis. They need no assistance; but, if this bill goes through, in other sections of the country where they have not been able thus to carry on the business on such a large scale, where they have not been able to finance themselves as these great organizations have been, where for one reason or another they have been unable to establish organizations that have been successful in operation, the growers of apples, for instance, would desire to associate themselves under the provisions of this bill and to take advantage of its operations. Those organizations, thus established, would, of course, become competitors of the organizations that are now in the field and that command it; and I can very readily understand that they want to restrict competition as much as possible. Probably they are not to be blamed for that.

My State is not in that situation. The apple-growing business was carried on for quite a number of years in the Bitter Root Valley in my State on a rather extensive scale. It produced, if I may be permitted to say so, a grade of apple that had no superior at all in the market—the MacIntosh Red; but the growers, for some reason or other, were unable to organize a marketing association of sufficient consequence to be a figure in the field at all, and the industry has dwindled until at the present time it is practically no longer a factor in the apple market at all. There are other sections of my State that are in much the same situation, and I have no doubt the same thing is true in other States.

This bill would afford those people an opportunity to organize on a safe basis, to finance themselves in a way that would enable them to put their product upon the market with some chance of standing the competition of these organizations that are already in the field; and I rather suspect that so far as this opposition comes from the apple growers, as distinguished from the commission merchants, it arises from a desire to restrict competition in their particular line of business. In other words, it is a selfish opposition; and I do not criticize it as being a selfish opposition. It is entitled to be urged; but it

seems to me it ought to be taken into consideration in the determination of the question that is now before us.

Mr. DILL. Mr. President, I had not intended to discuss this amendment at this time, because I am not so much interested in the exclusion of vegetables from the operation of the stabilization corporations; but the argument made by the Senator from Montana [Mr. WALSH] seems to be directed particularly at the apple industry, and I do not know why I should not discuss it now as well as at a later period. Of course, if the amendment of the Senator from New York [Mr. COPELAND] is adopted, there will be no need for the presentation of the amendment of my colleague [Mr. JONES]; but if the amendment of the Senator from New York is defeated, I shall then ask for consideration and vote upon the amendment of my colleague, which merely excludes apples and pears from the operation of the stabilization corporations.

Mr. REED. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Pennsylvania?

Mr. DILL. Yes.

Mr. REED. Does the Senator see any justification for including peaches, for example, and excluding pears and apples?

Mr. DILL. My colleague [Mr. JONES], I think, mentioned only apples and pears in his amendment because that was the request that came from the Northwest, and there were some who object to peaches, and I see no reason why they should not be excluded; and I should have no objection, and I am sure my colleague would not if he were here, to excluding peaches also.

I want to call attention to this fact: All of the proposals for farm legislation that have been made for a number of years have looked to the handling of the surplus of staple farm products rather than the handling of perishable products. In fact, as I recall, when the farm bill passed in the last Congress we excluded from its operation fruits and perishables because it was recognized that the equalization fee should not be applied to those engaged in an industry who were opposed to it.

I have here a statement which I think probably was given to every Senator, but I think some of them may not have read it, prepared on this particular amendment by a gentleman by the name of Samuel Frazier. I desire to call attention to some of the arguments which he presents as to why apples particularly should not be included under the operation of the stabilization corporations.

He calls attention to the fact that the apple crop must be sold during the year in which it is produced. It can not be carried over from year to year.

About two-thirds of the commercial crop, and all of that portion used for by-products, is used between June and December of the year in which it is produced. About one-third of the commercial crop is stored and consumed between December and the following July. Thus the apples are on sale for 12 months of the year, and the amount of the crop held in storage is increasing to insure uniformity of supply.

For over 50 years we have been producing an exportable supply of apples. In 1926 and 1927 we exported four and a half million barrels and 7,800,000 boxes, valued at $38,905,000. The export of this year is not complete, but it is indicated that there will be about 3,000,000 barrels and about 11,000,000 boxes exported, indicating that the export business is increasing in the boxed kind of apples and decreasing in the barreled apples.

About 20 per cent of the eastern apple crop is exported, and this is drawn largely from Virginia, West Virginia, New York, Pennsylvania, Maryland, and New England, and lesser amounts from Ohio, Indiana, Illinois, and Missouri.

The boxed-apple States—so called because of the boxes used in packing on the Pacific coast—export about 25 per cent of the crop, largely from Washington, followed by Oregon and California.

Apples exist in a great many varieties. This statement calls attention to 100 varieties; and each variety of apple seeks its own market. The Senator from Montana [Mr. WALSH] just mentioned the fact that in the Bitter Root Valley the MacIntosh Red had an unusual production. There are certain parts of the country and of the world where the Delicious apple has its own market; others where the same thing is true of the Winesap apple. In other words, you can not interchange this fruit so readily as you may interchange the more staple products of the farm.

Then I desire to call attention to these other arguments that are made here:

Apples do not lend themselves to stabilization, nor do other perishables of this kind, because they can not stand long periods of storage; and unless a stabilization corporation shall destroy a portion of the crop purchased it must be returned for sale either at home or abroad the same year, and no benefit is possible. At the present time our export sales, estimated at nearly $50,000,000 per year, are made on an f. o. b. basis. More money is going into the growers' pockets, often three or four months before the apples are shipped, and every effort is made to export all that can be paid for.

Mr. WALSH of Montana. Mr. President——

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Montana?

Mr. DILL. I yield.

Mr. WALSH of Montana. I wish to inquire of the Senator if no apples are carried over from one season to the other?

Mr. DILL. Not from one year to the other. No apples are carried over after August or September of the year following.

Mr. WALSH of Montana. They are put in cold storage in the fall?

Mr. DILL. Yes.

Mr. WALSH of Montana. And are sold, according to the statement, and as we all understand, continuously until, say, the following July?

Mr. DILL. Yes.

Mr. WALSH of Montana. Why not carry them a little longer?

Mr. DILL. Because it has been found that it is impracticable, and that they will decay, and they develop dry rot, and they become no longer desirable for eating purposes. There have been experiments whereby apples have been kept longer; but as a practical proposition of handling the apple crop it has not been possible to keep apples more than the one season.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER. Does the Senator from Washington yield to the Senator from Tennessee?

Mr. DILL. I yield.

Mr. McKELLAR. Of course, the manifest purpose of this bill is to stabilize and make better the price. Is not that true?

Mr. DILL. Yes.

Mr. McKELLAR. Then why should any apple grower object to the Government becoming another purchaser of the apple in order to stabilize and make better the price? I can understand how apple dealers who are controlling the crop and selling it out in a manner that is entirely to their interest might object to this bill, but how any grower of apples—and the grower is the one we are trying to protect in all this legislation—can object to having the Government come in as a possible purchaser, to having the Government step in to help increase the price and stabilize the price, is rather difficult for me to understand. I would be glad to hear the Senator on that subject.

Mr. DILL. Mr. President, I am glad the Senator asked the question, because it fits very naturally into what I am about to say, and I hope I may answer his other question with that, as to why it is important to the grower.

As I started to say, the Senator from Oregon, in answering the Senator from Montana, called attention to the fear of the apple producer that if a stabilization corporation is formed and used in any section of the country and attempts to handle the export business, it will not use the agencies that are to-day used by the cooperative apple organizations which handle our export trade.

Let me call attention to the practical operation of this bill as it probably will work out, and I think I can quote most of this, because it expresses the matter probably better than I can:

> A single State may secure the stabilization corporation and two cooperatives in one State are all that are necessary. If no others apply one small producing State may secure the certificate for a stabilization corporation and proceed to operate on the apple crop of the whole country.
>
> Suppose Georgia—

And I speak not with reference to any particular State, but using that State as an illustration—

> which grows a few apples, secured the stabilization corporation. It would incorporate under the laws of the State of Georgia, and the certificate is for five years, renewable ad lib. The growers of the leading States might feel they had to come in to save themselves from the competition of the "Federal instrument," for but one stabilization corporation is provided for a commodity.
>
> This is the rule of force, not cooperation; true, it is not forced compliance with legal enactment but the indirect compulsion enforced by that enactment—

Mr. SHORTRIDGE. Mr. President, will the Senator yield?

Mr. DILL. I yield.

Mr. SHORTRIDGE. Would it remove some of the objections to the matter under discussion if more than one stabilization corporation should be permitted to deal with a given commodity? As the bill is now, as I understand it, there is but

one stabilizing corporation permissible to deal with a given commodity. The Senator from Montana, I think, has tendered an amendment permitting more than one stabilizing corporation with respect of a given commodity, and I have offered to-day an amendment looking toward the same end.

Mr. DILL. I doubt that that would help. I think the objection would still be very strong to the idea of having the Government interfere by disorganizing the foreign market. I want to continue to read this particular statement, on the theory of one stabilization corporation, as provided by the law.

Should the stabilization corporation proceed to function and not wish to lose money it must depress prices to the point at which it is safe to purchase to insure return of the cost incurred in storage, carrying charges, insurance, losses from rots, decay, and other causes—

That is a very considerable loss, too, in the storage business, I may interpolate—

and with one powerful buyer in the field low prices to the grower and hand-to-mouth buying by distributors will prevail, the crop sales will not be pushed the way they should, and unless the stabilization corporation shall function each and every year it will bring disaster.

If the Government will function every year, then it is the Government in business all of the time instead of part time. We can not regard this as American.

Not knowing when or where the stabilization corporation may release its purchases and knowing that they must be released during the season, naturally all public confidence will be destroyed both at home and abroad. Under the present system apples move into consumption with actual knowledge of the quantities which must be disposed of.

We can not close our minds to the opportunity for abuses which confronts us. With the peculiar combination of a perishable commodity, a stabilization corporation in control of the commodity and its products, a clearing-house system, funds from Federal sources furnished without liability for their repayment, facts gathered by Government agents and propaganda distributed by agents paid from Government funds, and a politically appointed board to make the rules governing all, whoever is in control can hold up the movement from any section of the country or that portion owned by any individual, until it has become unfit for sale and so put a district out of business without due process of law. This is not business. It is chaos.

I do not want to take more time in connection with this statement other than to call attention to a quotation here from the statement of Mr. Hoover regarding the debenture when he said that if you give the board these powers you must assume they will use them, and when we give the board the power to grant a certificate for a stabilization corporation, as we now have, we must assume it will probably use it if there is a demand from any particular community.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. DILL. I yield.

Mr. McKELLAR. I recall several years ago—I do not know exactly how many, three or four, perhaps—when I was driving down in Virginia, I saw what seemed to me to be enormous quantities of very fine apples dropping from the trees. The ground was pretty well covered with them in various orchards. It made such an impression on me that I stopped at a home in the midst of one of those orchards and asked the gentleman I saw out on the front porch why it was that something was not being done, why the apples were not being gathered and used. Apparently vast quantities of them were simply rotting. He said that it did not make any difference to him; that he had sold his apples the fall before, and it rested with the owner of them whether they should be gathered or not.

I noticed that those apples were large, light-green apples, almost white, and when I came back home I crossed the street from where I was living—at Fourteenth Street and Pennsylvania Avenue—and asked the apple vendor for one of the same kind of apples. He charged me 10 cents for it, the same kind of apple as those that were rotting, apparently by many thousands of bushels, down in Virginia just a few miles away.

If these people will thus control the prices of the apples, without regard to the supply or demand, I wonder if they are satisfied with the present arrangement, and that for this reason they do not want any interference with it. Perhaps the Senator can give me some information about that.

Mr. DILL. I may say to the Senator that his question, of course, is the same kind of question we hear continually in regard to the price paid by the consumer as against the price received by the producer and the middlemen and others who handle the product are probably responsible.

That leads me to try to answer, if I can, the question the Senator put a moment ago, which I have not come to, about the interest of the grower in avoiding the stabilization corporation being used in the apple business.

The truth of the matter is that where the growing of apples is an organized business, the grower and the selling organizations are very closely combined. In the State of Washington and in parts of Oregon the cooperative organizations of growers have their own selling agents, and they have worked it out to such a state of perfection that you can not separate the interests of the grower and the seller. The fact that we have been able to market in Europe during the past year what are estimated to be about 11,000,000 boxes of apples has taken off the domestic market such a large part of the immense crop which we had the past year that the price of apples has been held at a profitable basis, even in the face of that immense crop. It is that success, having the apple business financed both by American and foreign capital, the success of selling agencies in the apple business, that makes the producers of the Northwest at least feel that it is a dangerous step to take to form a stabilization corporation, to come in when we are so dependent upon the sales of apples abroad for keeping the domestic price at a point where the producers can reap a profit.

I recognize the appeal of the argument as it is made that they do not need to come in if they do not want to, but the point I would like to make clear is that such an argument does not mean what it seems to mean on its face. They are all affected, and as the apple industry is now organized, if a part of them go into a stabilization corporation the others are either compelled to go in or probably will suffer much more than they would if they had gone in. The very fact that the stabilization corporation is formed in certain parts of the country becomes known to the buyers throughout the world, and immediately they think there will be an opportunity within a short time to purchase fruit at a lower price on account of the dumping that will be necessary if it is to be gotten off the hands of the stabilization corporation, and then the market is upset and the export business is hindered and the added amount of fruit on the domestic market forces the price of the entire crop below the profitable point.

Mr. McKELLAR. Mr. President, would not the argument the Senator is making in regard to apples apply to any other product contemplated under this bill?

Mr. DILL. Not if it is a staple product. The point I tried to make in the beginning was that there is a difference between the staple product and the perishable product.

Mr. McKELLAR. Since the discovery of cold storage, or the invention of cold storage, whatever you might call it, are not apples a very staple crop?

Mr. DILL. Staple up to a certain point, but it has its limits, and as a practical proposition apples are not generally considered of very much value after July or August of the year following the year they are produced. Especially is that true if you attempt to move them. If you keep them in cold storage, without taking them out, you can keep them for a long time in good condition, but if you attempt to move them, as it is necessary to do, even taking them from the cold storage quarters to the cold storage car, the change of temperature endangers their value as a food and for selling purposes.

I do not want to take any great length of time of the Senate. I want to place in the RECORD certain telegrams to my colleague [Mr. JONES], who is unable to be here, at his request. A number of these telegrams are sent both to me and to him. I should like to have it noted that they are placed in the RECORD at my request for both of us, and I want to have them printed at this point in my remarks.

The PRESIDING OFFICER. Is there objection?

There being no objection, the telegrams were ordered to be printed in the RECORD, as follows:

YAKIMA, WASH., *May 1, 1929.*

Respectfully urge you to use your efforts to exclude perishables, including fruits and vegetables, from provisions of farm relief bill now pending in Senate, because marketing of perishables is a highly organized and efficiently functioning industry, which would be seriously disturbed if the bill were made applicable thereto, and any attempt to apply provisions of said bill to our industry would utterly demoralize it, cause withdrawal of private capital now available in both domestic and foreign trade, and cause heavy losses to producers. The perishable industry is already adequately provided with storage and marketing facilities. Foreign outlets have been developed to a high degree through private enterprise of individual shippers and marketing organizations, including cooperatives, and are beng constantly expanded into new markets. So effective has been the marketing of perishables in foreign countries that for the season 1928, with the largest crop of apples in history of Northwest, exports of this product have exceeded those of any former year, and the prices obtained from foreign markets have equaled and at times exceeded those prevailing in domestic markets, with general results much better than in former heavy-crop years. For-

eign sales of perishables are being made principally at agreed prices f. o. b. shipping points or ports in the United States, with foreign capital placed in American banks on safe and sound basis, and governmental plans such as are proposed in pending measures will wreck the entire fabric of foreign trade in perishables that has been built upon sound business principles over a long period of years. The undersigned as a grower, owning and operating several thousand acres of land devoted to production of fruits and vegetables and as an organization specializing in marketing of perishables for thousands of growers in all parts of the United States, respectfully urges you not to permit our industry to suffer the terrible blow that would fall upon it and cause untold losses to ourselves and the growers we represent should any attempt be made to revolutionize and demoralize our industry under provisions of the bills now pending under the name of farm relief. Appreciate that the fanatical and hysterical pressure being exerted on all sides in favor these, and even more drastic provisions, presents a serious individual problem to each Senator and Congressman, but no man can afford to yield to such pressure realizing the chaos with attendant loss and suffering to millions of growers that would follow the application of such revolutionary measures to the highly specialized, intricate, and vital business of marketing fruits and vegetables. Our belief is that proposed law is utterly infeasible for perishables and will never be applied thereto, but unless perishables are excluded from the bill, attempts will be made to apply its provisions thereto, resulting in long, drawn-out agitation and controversy, which, along with the ever-present potential danger hanging over the industry, will stifle further development and intimidate domestic and foreign capital and those engaged in the distribution of perishables.

AMERICAN FRUIT GROWERS (INC.),
F. E. MILLER, *Regional Manager.*

YAKIMA, WASH., *May 1, 1929.*

After careful consideration by our traffic association of the farm relief bill as introduced in Congress and considering its effect on the Northwest fruit industry if applied to apples and pears appeal to you to exert every possible effort and means to have pears and especially apples excluded from said bill. The membership of our organization includes both cooperative organizations and independent shippers controlling 95 per cent of the fruit in Yakima Valley. The resolution above-mentioned was introduced by J. W. Hebert, manager of Yakima Fruit Growers' Association and seconded by A. H. Landis, assistant manager of the Yakima County Horticultural Union, which two organizations are among the most completely managed and successful cooperative fruit organizations and control approximately one-third the fruit of the Yakima Valley. Among our members are large growers, including H. M. Gilbert, the largest and one of the most successful individual growers of apples in the Northwest. Our members have grown and shipped apples and pears many years and from the experience thus gained believe that interference by a Government agency as proposed in the present market situation would be a calamity that would turn our industry back to methods involved 20 years ago in both domestic and foreign markets and the inevitable ruination of both growers and shippers of apples and pears. Careful study of apple and pear marketing will positively show that distribution and marketing is rapidly catching up with production as evidenced by the present season during which the largest crop of apples ever produced has been successfully and profitably marketed. Through the efforts of the industry, itself both cooperative and independent, the apple business has been brought from a nonprofitable consignment basis to at least 75 point cash and f. o. b. shipping point basis. There has been developed cash export business in every country of the world, nearly 12,000,000 boxes apples having been exported during the present season, of which we estimate 85 per cent was cash at shipping point or seaboard. To make it possible for any organization to dump an imaginary or real surplus into our foreign or domestic markets would totally destroy our cash and f. o. b. business and sweep aside what experienced cooperative and private growing and shipping organizations have taken years and millions of dollars to accomplish. We understand Senator COPELAND, of New York, has proposed or will propose an amendment excepting apples from the farm relief bill. If so, we earnestly appeal to you to support such amendment; if no such amendment has been proposed, we believe you will best serve your constituents' interests by introducing such amendment. We also urge you use every effort secure passage Summers bill (H. R. 2) and Borah bill (S. 108) at special session, licensing produce dealers, as these bills promise most practical and quick relief to growers and shippers of fruits and produce from losses due to unfair practices by unscrupulous dealers. H. M. Gilbert, now Washington, will confer with you and furnish you detailed arguments supporting our position.

YAKIMA VALLEY TRAFFIC AND CREDIT ASSOCIATION.

YAKIMA, WASH., *May 1, 1929.*

After careful consideration by our traffic association of the farm relief bill as introduced in Congress, and considering its effect on the Northwest fruit industry if applied to apples and pears, appeal to you to exert every possible effort and means to have pears, and especially apples, excluded from said bill. The membership of our organization includes both cooperative organizations and independent shippers, controlling 95 per cent of the fruit in Yakima Valley. The resolution above mentioned was introduced by J. W. Hebert, manager of Yakima Fruit Growers' Association, and seconded by A. H. Landis, assistant manager of the Yakima County Horticultural Union, which two organizations are among the most competently managed and successful cooperative fruit organizations and control approximately one-third the fruit of the Yakima Valley. Among our members are large growers, including H. M. Gilbert, the largest and one of the most successful individual growers of apples in the Northwest. Our members have grown and shipped apples and pears many years, and from the experience thus gained believe that interference by a Government agency as proposed in the present market situation would be a calamity that would turn our industry back to methods in vogue 20 years ago in both domestic and foreign markets and the inevitable ruination of both growers and shippers of apples and pears. Careful study of apple and pear marketing will positively show that distribution and marketing is rapidly catching up with production, as evidenced by the present season, during which the largest crop of apples ever produced has been successfully and profitably marketed. Through the efforts of the industry itself, both cooperative and independent, the apple business has been brought from a nonprofitable consignment basis to at least 75 per cent cash and f. o. b. shipping point basis. There has been developed cash export business in every country of the world, nearly 12,000,000 boxes apples having been exported during the present season, of which we estimate 85 per cent was cash at shipping point or seaboard. To make it possible for any organization to dump an imaginary or real surplus into our foreign or domestic markets would totally destroy our cash and f. o. b. business and sweep aside what experienced cooperative and private growing and shipping organizations have taken years and millions of dollars to accomplish. We understand Senator COPELAND, of New York, has proposed or will propose an amendment excepting apples from the farm relief bill. If so, we earnestly appeal to you to support such amendment. If no such amendment has been proposed, we believe you will best serve your constituents' interests by introducing such amendment. We also urge you use every effort secure passage Summers bill (H. R. 2) and BORAH's bill (S. 108) at special session licensing produce dealers, as these bills promise most practical and quick relief to growers and shippers of fruits and produce from losses due to unfair practices by unscrupulous dealers. H. M. Gilbert, now Washington, will confer with you and furnish you detailed arguments supporting our position.

YAKIMA VALLEY TRAFFIC AND CREDIT ASSOCIATION.

WENATCHEE, WASH., *May 1, 1929.*

Strongly urge exclusion apples from provisions farm relief bills. Perishability, necessitating seasonal marketing, and fact that intensive selling effort backed by intelligent advertising are characteristics apple deal differentiates it from wheat, etc. This conclusion results from 16 years' Wenatchee banking experience and thorough discussion with leading growers and others conversant with problems inherent our deal.

COMMERCIAL BANK & TRUST CO.,
By W. D. SHULTZ, *Cashier.*

WENATCHEE, WASH., *May 7, 1929.*

Admitting considerable difficulty keeping abreast almost daily changes farm relief legislation, we strongly urge your support to Jones amendment excluding apples and pears from stabilization provision farm relief bill. Undersigned represents 1,000 growers, shipping 5,000 cars apples.

SKOOKUM PACKERS' ASSOCIATION.

WENATCHEE, WASH., *May 1, 1929.*

A year ago we opposed the inclusion of perishables, especially apples and pears, in relief measures proposed then. We still are firmly of the same opinion, therefore urgently request use your influence for the excluding of apples and pears and other perishables from farm relief bill now before Congress.

NORTHWESTERN FRUIT EXCHANGE.

WENATCHEE, WASH., *May 3, 1929.*

We respectfully request that you use every effort to exclude apples, pears from provisions farm relief bills now pending in Congress. Convinced stabilization corporation especially dangerous to our export business, which is vital to welfare this industry. Representing 600 growers producing 3,600 cars apples, pears.

WENATCHEE OKANOGAN COOPERATIVE FEDERATION.

DAYTON, WASH., *May 8, 1929.*

Imperative apples be excluded from farm relief measure now pending.

J. G. ISRAEL,
O. F. ERBES,
H. E. PRICE,
G. H. JONES,
Growers.

YAKIMA, WASH., *May 2, 1929.*

Request that you support Senator COPELAND'S amendment to farm relief bill excluding apples and pears from bill.

WASHINGTON FRUIT AND PRODUCE CO.

YAKIMA, WASH., *May 1, 1929.*

I respectfully urge you in behalf of a number of growers, dealers, and brokers intimately connected and financially interested in the Northwest apple and pear business to support and fight for the Copeland amendment eliminating apples and pears from any farm relief bill that comes before the Senate.

L. N. SMALL.

CASHMERE, WASH., *May 6, 1929.*

Our cooperative organization strongly urges the exclusion of fruit from farm bill.

CASHMERE FRUIT GROWERS UNION,
F. C. PAINE, *Manager.*

SEATTLE, WASH., *May 6, 1929.*

The trustees of the Wenatchee-Okanogan Cooperative Federation, consisting of 12 cooperative associations of apple and pear growers comprising nearly 600 individual growers, for whom we act as sales managers, have voted unanimously denouncing so-called farm relief bills; have urgently requested that applies and pears be exempted from all provisions thereof, and have so wired their Senators and Congressmen. We have reason to believe that our other grower clients in various parts Washington, Oregon are equally opposed. What these growers really want is complete exemption of apples and pears from all provisions of bill, but if as practical matter that is impossible, then they insist on exemption from stabilization provisions and urge your vigorous, determined support of Jones amendment and also urge ceaseless vigilance until this menace to their industry is safely avoided.

GWIN WHITE & PRINCE (INC.).

WENATCHEE, WASH., *May 7, 1929.*

We respectfully request that you use every effort to exclude pears and apples from provisions farm relief bills now pending in Congress. Representing 50 growers shipping 400 cars pears and apples. Convinced stabilization corporation especially dangerous to our industry.

WENATCHEE FEDERATED GROWERS.

SPOKANE, WASH., *May 8, 1929.*

Respectfully urge you give full support to Jones amendment farm relief bill. Farmers our district want apples and pears excluded from stabilization-agency provisions.

OMAK FRUIT GROWERS.

BREWSTER, WASH., *May 8, 1929.*

We are a cooperative organization of fruit growers who are strongly opposed to the inclusion of pears and apples in stabilization agency provisions of farm relief bill. We favor the Jones amendment and urgently request most strenuous efforts for its support.

BREWSTER DISTRICT UNIT.

YAKIMA, WASH., *May 7, 1929.*

We can not too strongly request and urge your support of amendments taking fruits and vegetables, and especially apples and pears, out of proposed farm relief bill. Our position was fully expressed in recent telegram from Yakima Traffic Association, but we, as largest and one of the most successful fruit cooperatives in State of Washington, can not refrain from expressing our emphatic opposition to such basically unsound proposals as those contained in bill. The effect of stabilization corporations or debentures will be equally destructive to our apple export business, and the loan feature to cooperatives without necessity repayment is highly dangerous to welfare of sound cooperative development. We consider these features contrary to fundamental economic principles and destructive to best interests our growers. Therefore request your support of amendments.

J. W. HEBERT,
General Manager Yakima Fruit Growers Association.

WALLA WALLA, WASH., *May 7, 1929.*

We feel it a great mistake to include fruit in farm relief legislation, as fruit is a perishable product, too dangerous to hold and handle outside of present regular channels of good business which have been fully worked out after many years of experimenting and hardships. The great fruit industry of this State can not withstand further experimenting which is likely to cause serious trouble and disaster. Only lower freight rates east can bring any permanent relief to this industry.

BAKER LANGDON ORCHARD CO.

WENATCHEE, WASH., *May 7, 1929.*

The trustees of the Wenatchee Chamber of Commerce, after advising with large majority cooperative organizations, independent groups, and shippers, indorse the Jones amendment excluding apples and pears from the stabilization provision of the farm relief bill and urge your continued efforts support this amendment.

FRED M. CROLLARD,
President Wenatchee Chamber of Commerce.

YAKIMA, WASH., *May 6, 1929.*

Understand strong influence being used prevent adoption Copeland amendment, but that JONES has introduced one excluding apples and pears stabilization provisions Senate bill 1. Jones amendment will be acceptable to us, as those commodities only ones produced in volume here that could come under proposed plan. Please insist on passage Jones amendment at least.

YAKIMA VALLEY TRAFFIC AND CREDIT ASSOCIATION.

HOOD RIVER, OREG., *May 7, 1929.*

Fully concur wire from Hood River Traffic Association and urge your support Jones amendment excluding apples and pears from stabilization agency provision.

APPLE GROWERS' ASSOCIATION.

YAKIMA, WASH., *May 2, 1929.*

Have had joint conference with Yakima Valley Traffic and Credit Association regarding farm relief bill now being considered. The Yakima Chamber of Commerce, representing 960 business men and growers of Yakima Valley, is strongly opposed to inclusion of apples and pears in relief bill. Inclusion these perishable commodities in measure can do nothing but wreck an order of affairs which has been built up and improved over period of 20 years. We ask your strongest efforts to change bill to leave out apples and pears and urge renewed effort for early passage of Summers bill (H. R. 2) and Borah bill (S. 108). We concur in arguments presented you by wire even date by above association.

YAKIMA CHAMBER OF COMMERCE.

Mr. DILL. I will not take more time of the Senate at this time. Personally, I have no particular desire to see vegetables included in the exclusion amendment, but I think I shall probably vote for the amendment of the Senator from New York, and then if that is defeated, I shall offer an amendment of my own.

Mr. HEFLIN. Mr. President, before the Senator takes his seat, I would like to ask if it is his contention that the proposition which he now presents that the apple growers remain out of the bill is that it will be best for all apple growers?

Mr. DILL. I believe it will be for the reason I have tried to make clear that if the entrance of a stabilization corporation from any part of the country results in upsetting the export market, the stopping of the exporting of that number of boxes of apples that otherwise would be exported throws them on the domestic market and forces the price down to the apple growers all over the country.

Mr. HEFLIN. And that the cooperative associations already in existence here and abroad take care of the situation now to the satisfaction of the apple producers?

Mr. DILL. I think that can be fairly stated. Of course they can not handle a crop as big as we had this year, when we had the biggest crop in the history of the country, but owing to the well-organized cooperatives in the apple industry where it is conducted on a larger scale, we have been able to increase our export sales and will increase them to a greater extent this year, and for that reason the organized part of the apple industry especially is anxious to avoid anything being done that might upset the well-organized arrangements which now exist.

Mr. VANDENBERG. Mr. President, there is a very general desire among fruit and vegetable growers and producers in the Middle Northwestern States to maintain within their optional control whatever benefits this legislation prophesies for agriculture. I think they feel, speaking broadly, that the prospectus for agriculture carried in the bill is a rather undeveloped thing but that if in its ultimate helpful expansion it discloses advantages which perhaps may or may not now be foreseen, but which may become very acute and very specific, they want no present proscription written into the bill which will definitely and permanently foreclose them from those ultimate advantages and opportunities.

So far as the potato situation is concerned—and, of course, under the terms of the amendment of the Senator from New York [Mr. COPELAND] potatoes would be excluded from the operation of the bill—I fail to see how there can be any argument in favor of having this legislation apply to any crop or any commodity which would not be a decisive argument for applying it to the potato as a commodity and as a basic crop.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. VANDENBERG. Certainly.

Mr. COPELAND. If the Senator will permit, I desire to modify my amendment so it will read as follows:

As used in this act the words "agricultural commodity" mean an agricultural commodity which is not milk or perishable vegetables or a fruit, except grapes: *Provided, however,* That this subparagraph shall not apply to the provisions of section 9.

One reason why I interrupt the Senator from Michigan is because in this way potatoes will not be excluded from the bill.

Mr. SACKETT. Mr. President, may we have the modified amendment read at the desk, so we can all hear it?

The PRESIDING OFFICER. The clerk will read the amendment as modified.

The CHIEF CLERK. On page 25, and immediately following subparagraph (d), insert a new subparagraph reading as follows:

(e) As used in this act, the words "agricultural commodity" mean an agricultural commodity which is not milk or perishable vegetables or a fruit, except grapes: *Provided, however,* That this subparagraph shall not apply to the provisions of section 9.

Mr. VANDENBERG. The proposal of the Senator from New York, of course, undertakes now to meet the first objection to the proposed exemption. Lest there be any doubt as to whether that particular change ought to occur I present one exhibit, namely, the statement of the executive secretary of the National Potato Institute, whose language is as follows:

Representing the potato growers and shippers of all sections of the United States, who ship approximately 270,000 carloads annually, we respectfully petition that you use utmost efforts to block Copeland amendment eliminating fruits and vegetables from participating in farm relief legislation. The McNary bill as first introduced would be of great, permanent, and lasting benefit to potato and other perishable industries, materially assisting one-third of farmers of the United States who produce fruits and vegetables.

We pass on from potatoes.

Mr. COPELAND. Mr. President, will the Senator yield for a moment?

Mr. VANDENBERG. I yield.

Mr. COPELAND. Let us have it clear that whatever the language of the amendment as presented, it is intended specifically to exclude potatoes, so that that particular criticism may be answered. I may say that as I view it that particular crop might be used under the same conditions that would be used in handling the other stable crops of the country. It seems to me entirely reasonable that potatoes should be excluded from the amendment.

Mr. VANDENBERG. I thank the Senator for that concession.

Mr. WALSH of Montana. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Montana?

Mr. VANDENBERG. I yield.

Mr. WALSH of Montana. I would like to be advised as to just how it is that the amendment as it is now proposed excludes potatoes from the exception intended to be expressed.

Mr. COPELAND. Because under the technical language used to describe vegetable, a "perishable commodity," does not exclude potatoes. It includes only perishable vegetables and the potato is not regarded as a perishable vegetable.

Mr. WALSH of Montana. Regarded by whom?

Mr. COPELAND. By the trade, by the Agricultural Department, by those who have the technical knowledge of that particular line of product.

Mr. WALSH of Montana. I always imagined potatoes were at least as perishable as apples.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Idaho?

Mr. VANDENBERG. I yield.

Mr. BORAH. The Senator said the Agricultural Department does not regard potatoes as perishable. I do not know whether the department may have issued any bulletin to that extent or not, but potatoes certainly are a perishable commodity, and extremely perishable under certain conditions.

Mr. WALSH of Montana. I should say they are perishable in a high degree.

Mr. COPELAND. May we for the purpose of the discussion at the moment leave it here with the understanding that we will find language to make it clear that potatoes are excluded from the operation of my amendment?

Mr. BORAH. The language is at hand in the word "potatoes."

Mr. REED. Mr. President, will the Senator from Michigan yield for a suggestion?

Mr. VANDENBERG. I yield.

Mr. REED. Since all Senators seem to be in agreement and it is a mere matter of expression, I should think that if the amendment were changed to read this way it would meet with everyone's acquiescence:

As used in this act the words "agricultural commodity" shall include potatoes and grapes, but shall not include any other vegetables or fruits, and shall not include milk or milk products.

Mr. COPELAND. I have no objection to that.

Mr. BORAH. Will the Senator read it again?

Mr. REED. I suggest that it be changed to read this way:

As used in this act the words "agricultural commodity" shall include potatoes and grapes, but shall not include any other vegetables or fruits, and shall not include milk or milk products.

Mr. JOHNSON. Mr. President, is it the intention of the Senator to exempt from the operation of the act, therefore, apples, pears, plums, prunes, and all fruits?

Mr. REED. Exactly. I think that is the intention of the Senator from New York.

Mr. JOHNSON. Is that the intention of the Senator from New York?

Mr. COPELAND. Yes.

Mr. REED. I think that is what we ought to agree to.

Mr. VANDENBERG. Whatever the technique of the phraseology regarding potatoes is to be, I think the greatest safety lies in defeating the entire proposal of the Senator from New York, because the potato is but one of many commodities involved, and the others, from my point of view, are equally deserving of this bill's protection and stimulus.

The Senator from Pennsylvania [Mr. REED] said a few moments ago that we should be nationally minded in approaching the problem, and I concede that is entirely correct. But it has occurred to me as quite appropriate that I should refer to the men of Michigan who are most intimately familiar with the problem to discover what the Michigan nationally minded attitude ought to be. There has been a great deal of confusion of thought, but apparently the confusion is rapidly being straightened out.

I secured a list of the leading apple growers and producers of the Commonwealth of Michigan, which is one of the great apple States of the country. I sent them the specific categorical inquiry, "Do you want to be in or do you want to be out of the farm bill" With but few exceptions the almost unanimous answer is that the Michigan apple grower and the Michigan apple producer wants to be included within the bill. In other words, he wants to remain where he is and he wants the amendment of the Senator from New York defeated.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. VANDENBERG. Certainly.

Mr. COPELAND. Did the Senator also send a similar inquiry to every commission and produce man in Michigan?

Mr. VANDENBERG. No. I understand the bill was for farm relief and not for middlemen's relief.

Mr. JOHNSON. Mr. President, will the Senator yield?

Mr. VANDENBERG. Certainly.

Mr. JOHNSON. There is exactly the nub of the proposition. It is a contest between the grower on the one hand and the commission merchant on the other hand. I think the Senator from New York will concede that practically is the fact.

Mr. COPELAND. Of course it is.

Mr. JOHNSON. Exactly.

Mr. COPELAND. But are we going to destroy the very machinery which has made possible the marketing of vegetables and perishables in order that we may satisfy the yearnings of a few growers who think that somehow or other they see a millennium in that particular feature?

Mr. JOHNSON. Whence comes the prosperity of the men of whom the Senator is speaking? From the growers. For whom is the bill intended? For agriculture and agricultural commodities, not for middlemen and not for speculators.

Mr. WALSH of Montana. I understood the main purpose of the bill was to cut out the middlemen's profit.

Mr. JOHNSON. Exactly. It is to aid agriculture and to aid agricultural products, not speculators nor middlemen nor jobbers. They take care of themselves.

Mr. BORAH. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. LA FOLLETTE in the chair). Does the Senator from Michigan yield to the Senator from Idaho?

Mr. VANDENBERG. I yield.

Mr. BORAH. The proposition goes much farther than that. It is proposed that the middleman shall deny all men the right to get in if they want to. It is proposed that they shall be deprived of the initiative to join the proposition if they think it is for their best interests to do so. It is undertaking to

constitute a complete monopoly for the middlemen and to provide that in no other way shall business be done than that in which they have been doing it. I think it is not only unfair, but it seems to me it can not be defended from a legal standpoint.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. VANDENBERG. Certainly.

Mr. COPELAND. This shows the unfortunate necessity of making a speech with no one present to hear the presentation of the argument and then having to make the speech and present the argument again. I went all over that this morning in great detail.

If it be the purpose of this bill not alone to help the farmer but also to destroy the cities, all right; go ahead. The men who are engaged in the production of fruits and vegetables have never failed to get a price for their products as high as the world price. We are now and have been for years discussing the question of the surplus grain, cotton, and so forth, as to which the world price fixes the price of the domestic producer. Here we are dealing with products as to which there has been no failure on the part of those handling them to see that the producers get even better than the world price.

I can not follow any sort of argument which seeks to give all the benefit to the farmer. Those who live in the great cities of America should be accorded some rights. Here are industries which have been financed and developed, great refrigeration and storage plants have been built up, and the investment of millions of dollars made, and now it is proposed to wipe them all out in order that the middleman, who in this particular instance has not abused the producer, may be wiped out and an industry built up through years of effort destroyed. I can not follow the logic of that sort of argument.

Mr. VANDENBERG. Mr. President, I conceive there is no proposal here to destroy anything or anybody which or who is a legitimate part of the picture in its relation to the marketing of agricultural products. The middleman deserves and must have a square deal. But the farmer is our immediate concern. So far as the marketing of fruits and vegetables in Michigan is concerned—and that is a major market and a major producing area—one of the finest and most useful factors which has been developed is the cooperative movement; and the cooperative voice of the fruit and vegetable industry in that great area is unanimous, with possibly but one or two exceptions, in favor of being left with the optional privilege of having the same consideration under this agricultural bill that other products may enjoy.

I repeat that this roll call is practically unanimous. In just one instance is there a fruit exchange in the State so far as I have been able to discover in which there is any contrary opinion, and I repeat that I sought opinions by categorical questionnaires.

I have not undertaken to discover what the commission merchants think; I did not conceive that such an inquiry is fundamentally involved in the objective toward which we aim our efforts, because there is nothing in the scope of the preamble of the measure which calls upon me to consult others than the original grower and producer, the original agriculturist, in attempting to discover what his necessities may be.

Mr. COPELAND. Mr. President, will the Senator from Michigan yield to me?

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from New York?

Mr. VANDENBERG. I yield.

Mr. COPELAND. Has the Senator read section 9 of the bill relating to the clearing houses?

Mr. VANDENBERG. I think so.

Mr. COPELAND. If the Senator will read the language on page 18, line 2, he will find that it provides:

> Cooperative associations handling the commodity, independent dealers, handlers, and/or distributors of the commodity shall be eligible for membership in the association.

That is a part of the bill subsequent to the provisions that we are now discussing. My amendment seeks to leave in the bill that particular feature, in order that in case of emergency it may be applied by the board in a proper way. In that event, the commission merchants and the produce men, of whom I have spoken, would be given full consideration under the bill.

Mr. VANDENBERG. In undertaking to analyze such fears as I have heard expressed from Michigan regarding the operation of the bill, I have discovered only one or two criticisms which may be specifically identified, and it seems to me that a slight change in the body of the bill itself can adequately protect against any such dangers. I am thinking now along the line partially indicated by the distinguished Senator from Montana. I think it is a weakness in the bill that a stabilization corporation can be invoked in the case of a given commodity without an expression of the affirmative voice of a reasonably large percentage of those engaged in the production of that commodity, because otherwise a stabilization corporation might be precipitated upon the producers of such a commodity against the wishes of a major portion of such producers.

In the machinery which the bill sets up preliminary to the organization of a stabilization corporation is the provision which requires an advisory commodity council to be formed. The presumption, I suppose, is that the advisory commodity council is to have something to say about the stabilization corporation, whether it shall be organized, when and how and where; but there is nothing in the bill which requires that consultation or that consent. It seems to me that it would save the situation at that particular point if the bill were amended so as to require the affirmative consent of two-thirds of the advisory commodity council before a stabilization corporation shall be invoked.

Then it seems to me it is absolutely impossible to subdivide all commodities into identifiable units. I am of the opinion that there should be some latitude which would permit the organization of more than one stabilization corporation as affecting a given commodity if and when the Federal farm board discovers that one stabilization corporation alone can not hope adequately to cope with the situation. Both those subjects are covered in the amendments which I have taken the liberty of presenting and which lie upon the table.

Now, to sum up—and I did not intend to occupy any of the time of the Senate at all—I believe that with these or kindred corrections in the body of the bill there will be nothing left in it by way of menace against which legitimate criticism or formidable fears may be aimed.

I sincerely hope that the amendment of the Senator from New York, as well as the amendment of the Senator from Washington, will be defeated, so that fruits and vegetables in all of their subdivided relationships may retain the option of getting whatever ultimate benefit may be developed and disclosed in the expansion of this new program of farm relief.

I present this view as the surest reaction I have been able to obtain from this type of agrarian activity in Michigan. From the farm bureau, from the fruit and vegetable exchanges, from individual growers and producers, this is the uniform verdict with but slight exception. I shall not cumber the RECORD with these telegrams, but their trend is clear and distinct. It confirms my own abstract view. We are launching a great experiment in behalf of agriculture. It will be guided by sanity and reason and sound experience as personified in such a type of Federal farm board as President Hoover may be wholly trusted to ordain. It is my view that fruits and vegetables and their great sector of American agriculture should not be foreclosed in advance from optional participation in whatever dividends of advantage may be subsequently disclosed.

Mr. REED. Mr. President, I rise with diffidence to a discussion of this bill, because I know rather less about farming than any of the other subjects of which I am ignorant. [Laughter.] I have not time to list all of the subjects about which I know nothing, but I will admit, to begin with, that farming is one of them.

If we are going to bring relief to a part of this great industry, surely the recipients of that relief ought to be willing to receive it. It does not seem to be quite consistent with American ideals that we shall force economic medicine down their throats as we would administer medicine to a horse. Those engaged in these industries are sufficiently intelligent to know what they need quite as well as is a Congress composed largely of lawyers, and I have been very much impressed, not by letters from middlemen or commission merchants, although they are in a perfectly lawful business and are entitled to be heard, but by letters which have come from the officials of cooperatives formed to expedite and facilitate the marketing of these products. How can we answer such a letter as this, for example, which comes to me from the president of the Dairymen's League, speaking for the action of the board of directors of the league? This is what he says:

> The board of directors of the Dairymen's League Cooperative Association, together with 50 elected representatives of farmers, known as subdistrict presidents, representing 40,000 producers in this milk shed—

Whatever that may be—

> have gone on record as opposing the present bill.

Then at great length he narrates their objections to the bill, none of which seems to be met by the bill in its present form as we are called on to vote on it. That letter is signed by Mr. Fred H. Sexauer, president of the Dairymen's League.

The next letter to which I shall call attention comes from an apple grower in Pennsylvania. I apologize for the frankness with which he writes, but I think the meat of what he says is interesting. In a letter dated May 4 he says:

The amazing thing about this so-called farm relief legislation is that very few, if any, of the persons and organizations to be affected are in favor of the bill either as drawn or as passed by the House. Yet it is being jammed through. For example—

He says—

the National Cooperative Milk Producers' Association—

That is an organization different from the one whose letter I read a moment ago—

the National Cooperative Milk Producers' Association, composed of 43 groups and doing a business of over $300,000,000 per year, would like to be out of the bill. They are fearful of the stabilization and loan provisions as proposed and do not believe in the artificial spellbinding, evangelistic stimulation of further cooperatives at Government expense.

Then he proceeds at considerable length to give his reasons in detail.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Pennsylvania yield to the Senator from Idaho?

Mr. REED. I yield.

Mr. BORAH. There is no reason why he should not remain outside of the provisions of the bill.

Mr. REED. There is a very good loophole provided for his staying out of the stabilization corporation; but what is to happen to him if his competitors go into a stabilization corporation and receive all this Government stimulation in their competition with him?

Mr. BORAH. Exactly; but should we deny one citizen whose judgment is that he should go in the right to do so because another citizen's judgment is that he could do better out of it?

Mr. REED. If a great majority of those engaged in the apple industry or in the dairy industry wish their industry to be left out, we ought to hesitate to put that industry in merely because a few people want it in.

Mr. BORAH. If the Senator will pardon me, we put no industry in; we simply give an opportunity to the producer to come in.

Mr. REED. Precisely.

Mr. BORAH. One reason why I was so much opposed to the McNary-Haugen bill was that I thought it undertook to compel all to come in.

Mr. REED. But I think in practice this bill does compel them. Almost every State produces apples for sale in the general market. Washington, Oregon, and California may not want to come in, but the producers in one of their neighboring States, producing a relatively small quantity of apples, may organize a stabilization corporation. One per cent of the people engaged in the industry of growing apples may organize a stabilization corporation which will vitally affect the interests of the other 99 per cent.

Mr. BORAH. I think that is the individual right of anybody engaged in the industry. If he wants to come in, he ought to have a right to do so; if he wants to run his business in a certain way, he ought to have the right to do so; if a farmer wants to run his farm in a certain way, he ought to have a right to do so; it does not make any difference if a large majority desire to do otherwise.

Mr. REED. I agree with the Senator that if a farmer wants to run his farm in a certain way he ought to have the right to do so, but I do not agree that if he wants the Government to run his farm for him and give him handicaps in competition out of the Government Treasury that he ought to be allowed to do so. I do not believe that.

Mr. BORAH. Then the philosophy of the Senator would be against the bill as a whole.

Mr. REED. We will discuss that when we get up to the final passage of the bill; but I say that at the present time, where the great majority of the producers of dairy products and of apples want to have their industries left out of the bill as a whole, their wishes are entitled to be respected.

Mr. BORAH. Yes, to be respected; but if there is a certain class, although it may be a very small class, who feel that they are in a position where they ought to have this assistance, where they necessarily must have this assistance in order that they may survive, should we deny them that right because some one on the outside thinks it is to his interest that they should not have it?

Mr. REED. Yes; if the vast majority of the industry want to continue on the present individualistic basis, I should say that their wish ought to be controlling on us.

Mr. BORAH. That would be to give the majority the right to control the entire business.

Mr. REED. It would give the majority the right to be heard in refusing to have the Government meddle in their business.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. REED. I yield.

Mr. COPELAND. Let me say this to the Senator from Idaho: As I see it, if we are to permit various producers of the perishables that we have been discussing to form organizations, to have the benefit of Government funds, to buy up products, and then, when the board feels so disposed, to sell them on the world market, and glut the market at the time when private enterprise has a supply of these products to sell, we drive the private people out of the business and I think immediately ruin the vegetable and fruit business. It will not be the fact, but the fear, for I can not conceive it possible that sufficient funds should be given from a Government source to take the place of the intricate machinery necessary to handle the perishables.

Mr. BORAH. But, on the other hand, we are framing this law upon the theory that the different industries affected by it must be assisted, or else they will be destroyed.

Mr. COPELAND. But that applies to these stable crops, like wheat and cotton and corn, which it is impossible to handle through any machinery their producers can build up. They can not build up the machinery necessary to handle those great big industries, and therefore we are providing a way for their crops to be handled. This other industry, however, is now prospering under machinery already in existence, and if the Senator's way were had that machinery would be destroyed, because no longer could the commission and produce men get credit, no longer could they get the funds necessary, because lots of that is foreign money which is brought here. That would put out of business the machinery which now handles in a successful and satisfactory way the vegetables and fruits.

Mr. BORAH. Mr. President, leaving out the dairy industry—to which I think, by reason of its remarkable organization and efficiency, my remarks do not apply—there are a great many people engaged in the fruit and vegetable industry who are praying to be relieved from the operation of the machine of which the Senator speaks.

Mr. COPELAND. But in order to be relieved of the machinery of the machine, the Government would have to build refrigeration plants and all the intricate apparatus necessary to carry on the business. It stands to reason that the Government would not do that; but, at the same time, there would be all the time the club over these produce men and commission men that that might be done. Consequently their business will break down, and in the end the producers of these particular products will be infinitely worse off than they are at the present time.

Mr. BORAH. In view of the fact that this is optional, does not the Senator think that extending the privilege upon the part of the Government may serve as a club to make the machine more considerate to the producer?

Mr. COPELAND. I think it will——

Mr. BORAH. Then let us leave it there, and see what it will do.

Mr. COPELAND. I think it will serve as a club, but it will be a club applied so effectively in its menace that the machine spoken of by the Senator will be destroyed, and destroyed at once.

Mr. BORAH. No, no.

Mr. GLASS. Mr. President, I had supposed that the alleged benefits of this bill were optional to the various industries affected; but, as the Senator from Pennsylvania has pointed out, that is not a fact. If a mere segment of an industry can form an association which in effect will control the whole industry, I do not think that ought to be done.

Mr. REED. That is exactly the way the bill stands, and now they are going to make confusion worse confounded by proposing an amendment that there shall be more than one stabilization corporation in the same industry at the same moment; and if that will not bring chaos, I can not imagine anything that would.

Mr. LA FOLLETTE. Mr. President——

Mr. GLASS. My State is the third largest apple-growing State in the United States, and, along with Washington and New York and other great apple-growing States, the apple growers of that State have, by travail and long experience and tedious work, built up an industry. They have established their warehouses; they have established their barrel-manufacturing plants; they have their cold-storage plants. To say now that a great industry like that may be even incidentally controlled by a mere segment of fruit growers in the country is something that I do not think ought to be done.

Mr. BORAH. Well, Mr. President——

Mr. REED. Will the Senator permit me there? I suppose there is no finer exhibition of intelligent agricultural work than you will find in that apple belt that runs up through Hancock, Md., and down into Virginia, and up into Pennsylvania, and the other great apple-growing district in western New York, and the greatest of all, in the Columbia Valley in Washington. Those three apple belts have employed the most scientific methods of growing. Their orchards are most intelligently managed. It is one branch of farming that I do know a little about, because I have been interested in it in all three districts for a good many years. Their warehouse system, their marketing system, is thoroughly intelligent, and in seasons of ordinary crops they can count on a moderate profit, not because of any corner that they make, but because they have developed almost a world-wide market by intelligent marketing systems. They have developed for themselves a clearing-house. They do not send 20 carloads of apples to a market where there is a demand for only five or six. In all those ways they have immensely improved over the haphazard methods of a quarter of a century ago.

To say to those people, "All this marketing system that you have built up shall go into the discard, and a stabilization corporation forced upon you by a State which does not produce one-tenth what you produce is going to take the place of all your marketing system," and to say that to them against their will, to force the medicine down their throats as if we were dosing a horse, as I said a while ago, is not only unintelligent on our part, but it is highly unfair to those producers.

Mr. WHEELER. Mr. President, will the Senator from Pennsylvania yield?

Mr. REED. I yield.

Mr. WHEELER. Section 5 (a) provides that—

> Stock or membership corporations organized under the law of any State may make application to the board, in such manner as the board shall by regulation prescribe—

And so forth. In other words, for instance, a stabilization corporation might be organized in Montana for the purpose of controlling the apples produced all over the United States.

Mr. REED. That is right.

Mr. WHEELER. As the Senator says, the people in Pennsylvania who have built up this great organization may say, "Well, we would like to build up a stabilization corporation, providing that we can control it down here in Pennsylvania, but we do not want to be controlled by this group who have organized out in Montana," and vice versa; but it is discretionary with the board as to whether or not they shall recognize the stabilization corporation that is organized by a certain group in Pennsylvania or a certain group in California or a certain group in Montana. It seems to me there is going to be a great deal of confusion with reference to that.

Mr. REED. I think so, too.

Mr. BORAH. Mr. President, I hope the Senator from Pennsylvania will not take his seat, because I am seeking information. I should like to understand how a small group such as that of which the Senator speaks, desiring to avail themselves of the benefits of this bill, could force this larger group into the governmental operation.

Mr. REED. Under the bill as it stands any unimportant factor in the industry can, with the consent of the board, create a stabilization corporation. If the first section of the bill means what it says with reference to the powers of that corporation to realize the objects stated, it means that the very broadest power of rigging the market, so to speak, at Government expense, is given to that stabilization corporation.

You can not put up the price of Delaware apples without affecting the price of Pennsylvania apples. You can not change the price of Idaho apples without affecting the growers all along the Pacific coast. That stabilization corporation, representing an unimportant part of the industry, has the assistance of the United States Treasury in cornering the market. That is practically what it means.

Mr. BORAH. What the Senator means to say is, as I understand him, that not by the terms of the law itself, but by reason of the fact that the law gives authority for the organization of a corporation, the corporation perhaps could be more successful in dealing with apples than the private corporations, and therefore would drive the private corporations out of the market.

Mr. REED. I think that is what would happen.

Mr. BORAH. Then it would be only proof of the fact that the governmental operation is more successful than the private operation.

Mr. REED. Absolutely. It is bound to be as long as it has a conduit to the United States Treasury to pay all its losses. Nobody can compete with that.

Mr. GLASS. Mr. President, there is something more involved in the matter. The people who have built up a successful industry want to manage their own business affairs. They do not want any strutting satrap of the Federal Government nosing around in their business.

Mr. REED. Absolutely.

Mr. GLASS. That is one of the most annoying and exasperating things that I can think of. I have had experience with it.

Mr. BORAH. I am thoroughly in accord with the Senator about satraps, but what I am thinking about is whether or not we are going to extend any aid to those who we have been led to believe are in actual need of aid; whether or not we are going to give any governmental support to those who are in need of governmental support, who have not yet been able to come under the beneficent influence of these organizations.

Mr. GLASS. I will say to the Senator that I supposed we were aiding an industry, not individuals; not a mere segment of an industry. If a great industry is languishing the purpose of this legislation—I do not say that it will be effective—but the purpose of it is to aid the industry, but not to enable a mere inconsequential portion of an industry to organize a stabilization corporation and take possession of the business of a great industry.

Mr. BORAH. I will say that one thing that has come out of this debate—and that is the most encouraging thing that has happened in regard to this bill—is that there seems to be a belief that it will operate and be effective.

Mr. DILL and Mr. WALSH of Montana addressed the Chair.

The PRESIDING OFFICER. Does the Senator yield; and to whom?

Mr. REED. I yield to the Senator from Washington.

Mr. DILL. Mr. President, I want to call the attention of the Senator to the fact that under the amendment of my colleague [Mr. JONES] the right of the Government to aid the cooperatives still continues. The right of the cooperative to secure money still continues. The thing that we are objecting to is the establishment of a stabilization corporation which will go into the market for the purpose of controlling the price of the, apples that are produced throughout the United States.

Mr. BARKLEY. Mr. President, I desire to ask the Senator from Pennsylvania a question. I am not very familiar with the intensive cultivation or marketing of apples or other similar fruits; but in the course of the remarks of the Senator from Pennsylvania he suggested that if apples from Delaware were caused to rise in price, the rise would naturally be reflected in other States.

Mr. REED. And, of course, a drop in price in the same way.

Mr. BARKLEY. Is there any objection on the part of the producers of apples in other States to the raising of the price in those States as a reflection of the raising of the price in any State? Is that an objection to the provisions of this bill?

Mr. REED. No; but the converse of the proposition is true—that if the operations in Delaware result in a lowering of the price, that will be reflected on the producers in other States.

Mr. BARKLEY. Is not the very object of the stabilization corporation the prevention of a lowering of the price?

Mr. REED. Let me give a tangible illustration which I think will make it plain. On page 10 of the bill it is provided that—

> A stabilization corporation for any agricultural commodity shall have authority to act as a marketing agent for its stockholders or members, and to purchase, handle, store, warehouse, process, sell, and market any quantity of the agricultural commodity or its products, whether or not such commodity or products are acquired from its stockholders or members. Purchases or sales of the agricultural commodity or its products by the stabilization corporation shall be made in the open market in such manner as to effectuate the policy declared in section 1 of this act.

It is to minimize price fluctuations by controlling the surplus. In other words, that is a great deal of language vesting in these corporations the power to establish a corner in the market.

Mr. BARKLEY. They could only do that by going out into the open market and purchasing the available supply of apples or other fruits. If they do that, they naturally create some competition, which would inevitably raise the price, would it not, to the producer?

Mr. REED. As long as that commodity exists on earth, sooner or later it will find its way to market, and any stimulation of the price by cornering or engrossing the crop to-day will be reflected in a collapse later.

How would the Senator like to be in charge of a cooperative which had established its own marketing system in, let us say, the State of Washington or the State of Virginia, and then suddenly find himself in competition with a concern having

those powers and the Government's bank account to draw on to back it up? I do not think he would be very happy.

Mr. BARKLEY. The same situation might apply to any cooperative organization handling any commodity. There is no way to compel it to take advantage of whatever advantage this law offers to it and seek the assistance of the Government if it does not see fit to do so.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield to the Senator from New York.

Mr. COPELAND. Is there not another answer, Mr. President? Does it not come down to the fact that we must be fish or fowl? If the Government is willing to go into the business of taking care of all the perishables, of all fruits and of all milk, so that it can maintain a market and handle the surplus in foreign lands advantageously, that is one thing, but that is not what the Government will do under this bill, so far as fruits and vegetables are concerned.

What they may do is to assist some cooperative somewhere, as the Senator from Pennsylvania has said, but, as a result of the fact that the United States Government, with all the gold of our country, is back of these private industries, these commission men and produce men, who are now financed, perhaps, by foreign capital, they will have over them the threat that the Government may extend its operations, and therefore they will go out of business. That is just as inevitable as anything can be. So when we get through we will have ruined the industry, so far as the producer is concerned.

Mr. BARKLEY. I want to say to the Senator that I rose primarily to seek information on this subject from the Senator from Pennsylvania, and any other Senator, too, because I confess very frankly that I am not very familiar with that phase of this proposition. But can not the same argument be made against a stabilization corporation as to any other commodity, when private enterprise may be engaged in the purchase and the sale of that commodity?

Mr. COPELAND. If the Senator will permit me to answer that question, Mr. President, we have no great cooperatives or great organizations or any machinery to handle the surplus of wheat and corn and cotton.

Mr. WHEELER. There are the great warehouses.

Mr. COPELAND. All right.

Mr. DILL. Those commodities are not perishables.

Mr. COPELAND. They are not perishables; they can be handled and fed out as the time comes. But here we have in mind products which may perish in a few weeks, and if the Government goes into competition with private enterprise in buying up some of the products, what is it going to do with its purchases? As soon as a favorable opportunity comes, it is going to dispose of its supply in the domestic market or abroad. That is going to glut the market, destroy the private concerns, and to the Government it does not make any difference what the price received may be.

Mr. BARKLEY. If these organizations, backed up by the Government, are able to obtain a sufficient quantity to glut the market, if they were to sell it, would not that bring about an automatic increase in the price of the product to the producer, for whose benefit this bill is supposed to be enacted?

Mr. COPELAND. The answer is this, that if the Government is willing to take over all the business and share its profits with the producer, all right; but is the Government prepared to take care of cotton and corn and wheat and these other staple crops, and, in addition, to build up a business capable of handling a billion dollars' worth of exports in the vegetable and fruit line? If it is, all right, go ahead; but if the Government proposes to leave in the hands of private capital and private enterprise an industry which is now in the hands of private capital and private enterprise, and have it prosper, it must leave it alone and not put over it the sword of Damocles, where the thread may any time be cut, to bring disaster to that enterprise. Of course, the result of it would be that they would have to go out of business. They could not get the capital to operate.

Mr. BARKLEY. I will say to the Senator that I have had no communication at all with anybody on the subject of fruits and vegetables, except the letter I put into the RECORD a day or two ago from the National Horticultural Association, and this question has caused me some trouble and concern. I am seeking information in order to be enlightened as to how to cast my vote upon this matter.

Mr. JOHNSON. Mr. President, I want to call the attention of the Senate to the fact that the amendment now presented by the Senator from New York exempts from the operation of the bill all citrus and deciduous fruits, and I want as well to impress the Senate with the fact that the argument presented upon the floor of the Senate is that because there are certain institutions to-day conducting a business, we shall forever be denied the right to aid agriculture because those institutions think they might be injured or affected by the operation of this measure. We never could do anything for agriculture under the circumstances.

Mr. COPELAND. Mr. President, I have perfected my amendment and ask that it may be received in order that it may take the place of the one which I previously presented.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the amendment as modified will be received and printed.

The amendment as modified, being the pending amendment, is as follows: On page 25, and immediately following subparagraph (d), insert a new subparagraph reading as follows:

(e) As used in this act the words "agricultural commodity" shall include potatoes and grapes, but shall not include any other vegetable or fruit, or milk or milk products: *Provided*, That this subparagraph shall not apply to the provisions of section 9.

Mr. THOMAS of Oklahoma. Mr. President, I have on the table three amendments to section 2 of the pending bill. Section 2 relates to the creation of the Federal farm board.

When this bill was reported to the Senate it contained two vitally fundamental provisions; one, the creation of the board and the other the "debenture plan." But of the two provisions I assert that the character of the members of the board to be the most important—in fact, the ability, the understanding, the viewpoint, the energy, and the interest in agriculture of the members of the board make up the most important factor in the measure now pending before us.

A perfect law could and would be ruined by an inefficient or a designedly bad board. An imperfect law could bring untold benefits to the farmers if administered by an able and friendly board.

As to the importance of the character and personnel of the board I will deal a little later.

The work proposed to be done and the results hoped to be accomplished are outlined in the two bills now before us—one the House bill (H. R. 1) and the other the Senate bill (S. 1)—now before us and open for amendment.

I am now seeking to call attention primarily to the character of the personnel of the membership of the board; and at this point I will place in the RECORD a statement or description of the kind of a board proposed to be created by the bill (H. R. 1) recently passed by the other House of this Congress.

The chairman of the House Committee on Agriculture [Mr. HAUGEN], in reporting the farm bill, on page 8, said:

Section 2 creates a Federal farm board consisting of six appointed members to be appointed by the President and confirmed by the Senate, and the Secretary of Agriculture ex officio. Of the six members the President shall designate one to be chairman, who shall hold office at his pleasure and whose salary shall be fixed by the President. The five others are to be appointed for 2, 4, and 6 years, with their successors serving 6 years, and to receive a salary of $12,000 a year each. No restrictions whatever are placed upon the presidential power of appointment, and it is believed that it will be possible to secure a board of exceptional talents for this most difficult, powerful, and important work.

The set-up of the board as proposed in the Senate bill (S. 1) is materially different from that outlined by the chairman of the House committee.

Under the provisions of the Senate bill there would be appointed 12 members, 1 from each Federal land-bank district, and the Secretary of Agriculture is made a member ex officio.

In each bill the President is given the power to name the chairman and to fix his salary.

Each bill provides that in the absence of the chairman the President must be appealed to to designate some member to act temporarily in the place of the chairman.

The boards proposed in the two bills before us differ from the board proposed in the bill passed by the Seventieth Congress, which, because of a presidential veto, failed to become a law.

That board was to contain 12 members, with an added member in the person of the Secretary of Agriculture.

Under the provisions of the former bill the salaries were fixed at $10,000, while in each of the pending bills the salaries are fixed at $12,000, save that of the chairman, which can be fixed at any figure within the discretion of the President.

I have three objections to the Senate section. I object to the provision which provides that in the event the chairman for any reason is unable to call and preside at a meeting of the board, a messenger must be sent to the President advising him of the situation and asking him if they may hold a meeting and if so to designate some one to call it and to preside. My first amendment is as follows: On page 3, beginning in line 14, after the word "board," strike out the balance of said line, and all of

line 15 and all of line 16 down to and including the word "chairman," and insert in lieu thereof the following: "The board shall select a vice chairman, who shall act as chairman in case of the absence or disability of the chairman."

Following action on this proposal, I will offer a second amendment, as follows:

On page 3, line 19, after the word "States," strike out the word "who," add a comma, and insert the following: "shall understand the farm problem, shall have the viewpoint of the farmer, shall have the interests of agriculture uppermost, and."

Then I shall offer a third amendment. On page 4, at the end of line 5, add a period and strike out all of line 6 and the word "President," in line 7. The force of this amendment is to deny the President the power to fix the salary of the chairman, whereupon the chairman shall receive the same salary as the other members of the board.

In support of this amendment I call attention to the salaries of the other members of major Federal boards.

FEDERAL BOARDS AND COMMISSIONS—NUMBER OF MEMBERS AND SALARIES

Interstate Commerce Commission, 11 members at $12,000 per annum.
United States Board of Mediation, 5 members at $12,000 per annum.
United States Shipping Board, 7 members at $12,000 per annum.
Federal Reserve Board, 6 members at $12,000 per annum.
Federal Trade Commission, 5 members at $12,000 per annum.
United States Tariff Commission, 6 members at $9,000 per annum.
United States Board of Tax Appeals, 16 members at $10,000 per annum.
Federal Radio Commission, 5 members at $10,000 per annum.

The chairman of no existing Federal board receives more salary than the other members of such board. In no case has the power been delegated to the President to fix the salary of the chairman.

The provisions of section 2, if unchanged, will in my judgment result as follows:

The Congress will delegate very great powers, theoretically, to a Federal farm board, but actually such powers will be delegated to the President of the United States.

The chairman, specially selected and commissioned, with a probable substantial increase in salary, such favors held through the preferment of the President, will be little more than the secretary or chief clerk of the appointing power. To reinforce my opinion herein expressed, I call attention to the provision of the House bill—H. R. 1—to the effect that the chairman may serve only at the pleasure of the President.

The House bill contains the provision that the chairman of the board shall serve only at the pleasure of the President. He can be appointed at will and discharged at will. I offer that as a substantiating reason for the statement I have just made.

At the proper time I shall call from the table these three amendments and in order will ask that they be considered.

DEBENTURE PLAN

Mr. President, the Senate has just passed judgment on what is known as the "export debenture plan" and, by a vote of 44 for to 47 against, has ordered the "plan" retained as section 10 of the pending bill.

Inasmuch as notice has been served that we may have the substance of this section to deal with at a later date, I will incorporate at this point a brief statement of the essential principles of this plan:

The essential principle of the export-debenture plan is the paying of a bounty on farm products in the form of negotiable instruments called "debentures" which can be used by importers in paying import duties. The price of domestic farm products would be raised to the extent of the bounty; likewise, prices to consumers. The revenues of the Government would be reduced by the amount of the export debentures issued. The maximum height of the export bounty is the import duty; otherwise, a return flow of the product would set in.

Before I proceed further let me say that when the roll is called on the final passage of the pending bill I will vote "aye." My vote, however, will be inspired more by desire and hope than by faith and confidence; yet the vote just had increases my hope and at the same time checks to some degree the fading of my faith and the waning of my confidence in the sincerity of some of those now in control of this legislation, which is so vital and means so much to approximately one-third of the population of America.

I am not yet assured that the other branch of this Congress will accept the proposal, and if the light should come to a majority of the Members of that body I entertain a most serious doubt about the approval of the measure by the President of the United States.

COMMENDS COMMITTEE CHAIRMAN

At this point I will pause to pay a tribute to the chairman of our committee. Full well do I realize the nature of the post he holds. Whatever his personal convictions upon the issue just passed upon, as a general in the army he, of all others, must work harmoniously under the grand command in carrying out the program decided upon. And I, here and now, admit that neither the equalization fee nor the debenture plan nor any other plan which would materially help the farmer at an early date has been made a part of any program for the relief of the farming masses of our country.

Nothing but praise and commendation can be associated with the distinguished chairman of our committee. His task has been that of a superman, and twice has he risen to a superman's estate, and even now we, his willing subjects, have not permitted him to descend from that high estate.

DUTY OF CONGRESS TO ENACT LEGISLATION

Mr. President, the duty and the responsibility of proposing and enacting legislation for the welfare of the people rests exclusively upon the individual Member of the Congress. This duty and responsibility can not be avoided. It is no answer to a criticism of neglect and inactivity to say that somebody would not let us do the thing we knew or even thought should have been done.

The Constitution provides that the powers of the Government shall be exercised through three branches—the legislative, the executive, and the judicial. The legislative powers come first under Article I. The powers of the executive come next, under Article II, and the powers of the judiciary come last, under Article III.

LEGISLATIVE BRANCH COMES FIRST

The legislative power comes first, and the makers of the Constitution devoted a very large percentage of their labors to the task of defining such powers. The Constitution, with all amendments, embraces approximately 6,000 words, of which 65 per cent are devoted to defining the powers of the Congress, 12 per cent are devoted to the executive department, 5 per cent are devoted to the judiciary, and the balance of 18 per cent are devoted to the general provisions of the instrument.

The makers of the Constitution did not contemplate that the Congress should either delegate or abdicate any of its powers to any created or to be created board, bureau, or department.

Section 3 of Article II provides that the President—

shall from time to time give the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses * * *.

Mr. President, we are now in special session for the sole reason that this is an extraordinary occasion. What has brought about this extraordinary occasion? The President answered this question in his Palo Alto speech when he said:

The most urgent economic problem in our Nation to-day is in agriculture.

Following his induction into office and exercising the power conferred on him by the Constitution, the President convened the Congress in special session, and on the second day of this session by message informed us "of the state of the Nation." And then, assuming his further responsibility and exercising his clear and well-defined power, he recommended what no doubt appeared to him to be a solution of the economic problem confronting agriculture.

As a solution of the farm problem the President suggested and recommended the following:

First. A readjustment of the tariff;

Second. A lowering of freight rates by the building of a great system of inland waterways;

Third. Reorganization of the marketing system upon sounder and more economical lines; and

Fourth. The creation of a Federal farm board of representative farmers.

Mr. President, the Chief Executive has assumed and discharged every responsibility resting upon him to date. Let me emphasize the words "to date."

If the Congress enacts this bill and the bill is approved by the President and the agricultural problem is solved and relief is brought to agriculture, the credit will go to the Congress and to the administration in power.

On the other hand, if the Congress passes this bill and the measure is approved and the farm problem is not thereby solved and the present distress and threatened if not the actual bankruptcy of agriculture is not thereby diverted, then the failure will be chargeable, and rightly so, to the inability or the inefficiency or to the neglect of the legislative branch of our Government.

The President is not charged with the duty and responsibility of enacting legislation. The only duty he has to perform in connection with legislation is: First, to advise the Congress on the

state of the Nation; second, to recommend such measures as he shall judge necessary; and third, to either sign such bills as may be enacted or to return same with his objections.

To-day no additional constitutional responsibility for the solution of the farm problem rests upon the President of the United States. That responsibility rests solely upon the Members of this Senate and the Members of this Congress. From this conclusion we can not escape and I congratulate the majority of the Members of this Senate upon their acceptance of such responsibility and upon their choosing to vote their judgment rather than to register the wish or desire of some influence or power not so charged with a solemn duty to perform.

Mr. President, if this Congress passes a bill that it considers to be a solution of the farm problem, and if, for any reason, such bill does not become the law, then the Congress has discharged its duty in full and the responsibility for inaction or failure will rest otherwise than upon the Members of the Senate and House of Representatives.

While the friends of the farmer have been able to keep the debenture plan in the bill to date, I am not so optimistic as to concede that the "plan" will be accepted by the other House, and, if accepted by the other House and sent to the President, that the proposal will ever become the law.

REASON FOR OPPOSITION

Before passing from this phase of the bill, I am constrained to suggest a reason for the opposition to the adoption of the "debenture plan." My reason is that it would work. It would operate to raise the price of the farmers' produce.

The President, in his letter to our chairman, admitted that it would stimulate production through increased prices for farm commodities. The reason just stated is further supported by a similar admission made by the Secretary of the Treasury. In his letter, accompanying that of the President, he says:

> There is no doubt, I think, but that the effect of this program would be to depress world prices and to increase domestic prices, and to give to the American producer a price higher than he would otherwise obtain.

Then, on Saturday last, the distinguished Senator from Kansas [Mr. CAPPER] made a startling statement. He said:

> If you put this subsidy into effect we will increase our production of wheat in Kansas, through our use of big power on our level fields, in a way that will give the Treasury plenty of work to do.

HOW DEBENTURE PLAN WOULD AFFECT KANSAS

What does this statement mean? It means that if the debenture plan is retained in this bill the wheat farmers in Kansas will find the raising of wheat so profitable that they will prepare their level fields with tractors and gang plows, will sow the seed with power drills, will harvest the grain with combines, will spend their leisure in "big power" cars, and will "give the Treasury plenty of work to do" in handling their income-tax returns and payments.

What will such prosperity mean to Kansas? It will mean increased demand for "big power" machinery, tractors, power drills, and combines, along with all kinds of farm machinery and equipment. It will mean increased demand for motor cars, increased business for the railways, increased business for the express, telegraph, and telephone companies, increased business for the public utilities, and, because of such increased prosperity and the increased purchasing power of the farmer, it will mean an increased demand for everything which the merchants and tradesmen offer for sale in the many fine cities and towns of Kansas.

Will such activity ruin Kansas? If the debenture plan can be retained in this bill and if it will produce the results admitted by the able Senator from that great State, then we will have the answer to that famous question propounded a few years ago: "What is the matter with Kansas?" and the answer will be, "Nothing is the matter with Kansas."

But if the debenture plan is yet to go out, it will be largely because of the influence of the two able Senators from that wonderful State, and the question will be with us still: "What is the matter with Kansas?"

In this connection, Mr. President, I now have in my possession two letters from which I desire to quote. Each letter relates to the bill now before us. One is from a wealthy attorney of Oklahoma. It gives an answer to the question "What is the matter with the farmer?"

The answer is:

> I think the relief of the farmers is to work and quit hiking round with their jitneys and going to picture shows and rodeos and stay on the farm to raise something. My experience of 40 years is that the man on the farm, I don't care who he is, if he hasn't some sickness or unavoidable accident, if he will just work and save will get ahead.

The other letter is from a real dirt farmer, a resident of Kansas. It answers the letter from the Oklahoma lawyer. It says:

> I am working 320 acres of land, rented from my father-in-law, who never had sons of his own. I am not exactly a failure as a farmer either, if you will take the trouble to look me up and find out a few of the little things I have helped to accomplish hereabouts. My wheat makes as much as 40 bushels to the acre, my chickens lay 210 eggs and more a year, my cows run to 280 and 300 or more pounds of butterfat in a year, and we have side issues here like bees and garden and sweet clover rotation in our fields, and just to-day the county agent brought out a representative of Mr. Mercer's office in Topeka to discuss some vital moves in a county-wide tuberculosis-eradication campaign to be put on this fall. But try as hard as I may, I can't get ahead in the world as fast as I ought; my time books show over 3,300 and 3,500 hours of labor I put in here in the past two years, so I haven't been running around away from my business; I hold membership in four lodges in town, and haven't been to any of them for over a year, only one of them then, and one I haven't been to for eight years. It is 17 years since I saw a ball game and 11 since I saw a picture show, all because I have been tending to my business trying to get ahead. Just a week or so ago, the missus got to figuring on a bathroom for the house; she is raising her family now and needs its convenience. I said I'd buy the equipment if the landlord would build in the room. The carpenter's estimate was $300, and that blocks the whole deal. Why? Because the products of this farm don't bring a high enough price to give the money necessary to do these things with. No; not from a half section of land, and the crops and cows and chickens and stuff and all that we are able to get around and over it.

Mr. President, those who would deny the man who tills the soil the right to attend his lodge, the time to witness an occasional ball game, a movie, or a circus, and who would deny his family the convenience of a bathroom have already condemned the farmer to eternal peonage, peasantry, and economic slavery. Shall this be the final verdict of the first special session of this the Seventy-first Congress? I am thrice glad to-day that such a verdict has not been entered by the Senate of the United States.

MY TRIP TO OKLAHOMA

After this special session had been called, and after the Senate Committee on Agriculture and Forestry had about concluded its hearings, in order to learn first-hand of conditions in my State I had arranged and advertised a series of meetings to which the public and especially the farmers were invited and urged to attend.

Oklahoma is located in the Central West and on the line between the North and South, and produces practically all the farm crops grown both North and South in the United States. We have our wheat lands in the north and cotton plantations in the south and diversified crops, such as corn, oats, alfalfa, broomcorn, potatoes, melons, livestock, and dairying, covering the entire State.

I made these meetings by airplane. I visited sections so as to come into contact with every group and class. For 10 days I listened to recitals, and the story of the Kansas farmer is the story I heard in every section of my State. From the air, my State, with its mountains, plains, and timberlands, with its uplands and its valleys, with its wheat, corn, alfalfa, and cotton areas, and with its mines, factories, and oil fields, presented a picture no artist could paint. Yet Oklahoma is no exception to the rule.

Our farmers are not prosperous. Out of the hundreds, I met two who stated that they had made some money during the past few years. One was a cotton farmer, owning first-class bottom land, with a large family, all being pressed into service as cotton planters, cotton choppers, and cotton pickers. The other prosperous farmer was a cattleman, who admitted that his prosperity was of very recent origin, and due to the present satisfactory price of cattle.

ARGENTINA EMBARGO

By way of digression, let me say that the present high price of cattle is due almost wholly to the embargo upon the importation of livestock, meat products, and hides from Argentina, such embargo having been imposed against these imports from Argentina because of the existence in that country of either the foot and mouth disease or rinderpest. As soon as these diseases are eradicated from the livestock of Argentina the present embargo will be raised, and at that time the cattle industry of America will be forced into competition again with the meat production of our southern competitor. When that time arrives, unless a tariff is placed upon the importation of such products, the cattlemen of the country will find that their present prosperity has been destroyed.

I had not proceeded far upon my journey until I was convinced that the little or average farmer was not receiving

returns commensurate with either his investment or the hours of labor performed by himself and members of his family.

FAMOUS 101 RANCH

I then visited the famous 101 Ranch, a consolidated farm of some 101,000 acres, located in one of the finest sections of the United States. This great property has been developed within the lifetime of two generations. It is to-day the largest modern farm in the world. The ranch has ample finances. It has its own oil field and its own refinery, its own dairy and its own creamery, its own packing plant and its own tannery. It has hundreds of acres of orchards and operates its own cider and vinegar plant. It has its own general store, power plant, and water system.

The land is diversified—upland and bottom. It produces successfully wheat, corn, oats, alfalfa, cotton, potatoes, sweet potatoes, and fruits.

The institution was started and developed originally as a cattle ranch, but a few years ago the collapse of the cattle business almost wrecked the institution. The ranch lands were then sown to wheat and oats and planted to corn and cotton. The management soon found that the expense of farm labor and farm machinery made it impossible to produce wheat at a profit; hence that commodity, as a major crop, has been discontinued.

Dairying on a large scale, with a modern creamery on the ranch, was then tried, but neither could be made to pay. The tannery has likewise been closed.

The ranch is now practically out of the cattle business. The grazing lands can not be satisfactorily disposed of, hence they are being leased for such rentals as can be secured. The vast fields of the ranch are to-day being devoted to the raising of corn and alfalfa, and the livestock interest has been centered in the raising of hogs.

The 101 Ranch is no longer a chain of cow camps, is no longer a vast wheat area, but instead has been converted into the largest hog ranch in the world. Hogs by the thousands are being produced, matured, fattened, butchered, and processed in the local packing plant and the finished product is being distributed in the ranch's own refrigerator trucks to cities and towns within the radius of 100 miles.

With consolidated and efficient management, with improved machinery and modern methods, with ample finances, with a diversified soil, and with the profits from oil wells and a circus to offset possible losses, the 101 Ranch is still a going concern.

But, Mr. President, without the provisions of the debenture plan, what benefit or what hope even do the provisions of the pending bill hold out to the farmers of my State or to the farmers of any State?

After the many entertaining, instructive, and able addresses which have been made upon this so-called farm relief bill, perhaps I should tender an apology for occupying additional time in presuming to discuss any phase of the question, and thus postponing action on the various amendments and, likewise, postponing a vote on the final passage of the bill itself; however, the fact that I am a member of the committee which reported the bill, the fact that Oklahoma, the State which has commissioned me to speak and vote in this Chamber, is primarily an agricultural Commonwealth, and the fact that some 30,000,000 of our citizens, owning some 6,500,000 farms, having a consolidated investment of $75,000,000,000, are now watching every move made and are listening to every word uttered by those chosen to act and speak for them—these facts urge me to use this time in assisting to make the record which the Senate of the United States will leave as its contribution to the solution, or attempted solution, of the most vital issue of the hour.

After 8 years of hearings, 8 years of debates, and 8 years of consideration, this is the bill, in outline and in substance, save the debenture plan, which is to be given to the country under the solemn promise of giving "equality of opportunity to the farmer."

If the debenture plan goes out, I will still vote for the bill, yet I will not be deceived as to its provisions, or, perhaps, I should say, as to its lack of provisions; however, in fairness to its proponents, I will admit that, in the absence of the debenture plan, it is not claimed that the bill will bring about any temporary or immediate relief. It is claimed only that it will be a beginning and that the passage and approval of the measure will commit the Government to the policy of agricultural relief. A start and an announcement of policy are all that are suggested, proposed, and claimed by those sponsoring this legislation.

The House of Representatives has already acted upon this subject matter. The result of the deliberations of the other branch of the Congress is now on the desk of the President of the Senate.

Notice has been given by the chairman of the committee that, when the text of the pending bill (S. 1) has been perfected, the House bill (H. R. 1) will be taken from the table, a motion will be made to strike out all after the enacting clause, and the text of the Senate bill (S. 1) inserted instead, and thereafter, the House bill (H. R. 1), as thus amended, will be returned to the House of Representatives for its further consideration.

This procedure will place in disagreement between the Houses much of the subject matter in the respective bills.

As soon as the result of our deliberations reaches the other body a conference will be requested and granted, and then the work of preparing the final measure will begin.

The bill we pass here now will not become the law, because in conference a new bill will be prepared and submitted; and, when the conference report, embracing the new bill, is brought here for consideration, I will again have no alternative and, whatever it is—whatever its delinquincies, for the want of anything better—I will again vote "aye."

The Congress is committed to the passage of a bill to help the farmer, and any bill now enacted into law will commit the Government to the policy of bringing about aid to agriculture.

What is the history of this ever present and continuing effort to bring about some relief for agriculture? Let me state it briefly:

In the Sixty-eighth Congress the problem was recognized and an effort was made to solve it. Bills were introduced in both the House and Senate, but no agreement was reached and the issue was passed over to the next Congress.

When the Sixty-ninth Congress was convened many bills were introduced. Each Congress considered and passed a measure and, in conference, Senate 4808, known as the McNary-Haugen bill, was perfected, reported, passed, and sent to the President for his consideration.

REASONS FOR PRESIDENTIAL VETOES

President Coolidge, instead of signing the measure, took 29 pages in stating his reasons for vetoing the bill. The objections of the President summarized were as follows:

The bill would increase our tendency toward bureaucracy.

It would involve governmental price fixing.

It would delegate powers to a farm board and it would stimulate overproduction.

The Congress was not able to pass the bill over the presidential veto and it died with the Sixty-ninth Congress.

In the Seventieth Congress a similar procedure was followed. Bills were again introduced and, for a second time, a McNary-Haugen bill was passed and sent to the President for his approval. Again the President returned the measure with a veto message. In this message, among other things, the President said:

> A detailed analysis of all of the objections to the measure would involve a document of truly formidable proportions. However, its major weaknesses and perils may be summarized under six headings:
>
> I. Its attempted price-fixing fallacy.
>
> II. The tax characteristics of the equalization fee.
>
> III. The widespread bureaucracy which it would set up.
>
> IV. Its encouragement of profiteering and wasteful distribution by middlemen.
>
> V. Its stimulation of overproduction.
>
> VI. Its aid to our foreign agricultural competitors.
>
> These topics by no means exhaust the list of fallacies and, indeed, dangerous aspects of the bill, but they afford ample ground for its emphatic rejection * * *.
>
> This bill also provides that the equalization fee collected on any agricultural commodity produced in the United States shall in addition be collected on importations of that commodity. This provision would empower the board to do the following:
>
> (1) Regulate foreign commerce, for the equalization fee on imports would be in fact a tariff. This surely would be a delegation of legislative power, since no logical rule is prescribed to govern the board's actions in making this addition to import duties.
>
> (2) Raise the domestic price to the consumer not only to the full amount permitted by the tariff but as far above that amount as the board might deem proper and expedient * * *.
>
> The real objective of the plan in this bill is to raise domestic prices * * *.
>
> In conclusion, if the measure is enacted, one would be led to wonder how long it would be before producers in other lines would clamor for similar "equalizing" subsidies from the public coffers. The lobbies of Congress would be filled with emissaries from every momentarily distressed industry demanding similar relief of a burdensome surplus at the expense of the Treasury * * *.

Three Congresses have recognized the agricultural problem. Two have passed bills proposing a solution, and each bill has met death at the hands of the President.

FARM ISSUE BEFORE NATIONAL CONVENTIONS

But the issue did not die. The increasing prosperity of the groups favored by legislation stood out boldly before the millions of our farmers and the fight to secure legislative equality with such favored and prosperous groups was transferred to the conventions of the two major parties during the summer of 1928.

The Republican National Convention of 1928, held at Kansas City, adopted the following provisions as a part of the Republican platform:

The Republican Party pledges itself to the enactment of legislation creating a Federal farm board clothed with the necessary powers to promote the establishment of a farm marketing system of farmer-owned and controlled stabilization corporations or associations to prevent and control surpluses through orderly distribution.

We favor adequate tariff protection to such of our agricultural products as are affected by foreign competition.

We favor, without putting the Government into business, the establishment of a Federal system of organization for cooperative and orderly marketing of farm products.

The vigorous efforts of this administration toward broadening our exports market will be continued.

The Republican Party pledges itself to the development and enactment of measures which will place the agricultural interests of America on a basis of economic equality with other industries to insure its prosperity and success.

The Democratic National Convention of 1928, held at Houston, Tex., adopted the following provisions as a part of the Democratic platform:

Farm relief must rest on the basis of an economic equality of agriculture with other industries. To give this equality, a remedy must be found which will include, among other things:

(a) Credit aid by loans to cooperatives on at least as favorable a basis as the Government aid to the merchant marine.

(b) Creation of a Federal farm board to assist the farmer and stock raiser in the marketing of their products as the Federal Reserve Board has done for the banker and business man. * * *

(c) Reduction, through proper Government agencies, of the spread between what the farmer and stock raiser get and the ultimate consumer pays with consequent benefits to both.

(d) Consideration of the condition of agriculture in the formulation of Government financial and tax measures. * * *

We pledge the party to an earnest endeavor to solve this problem of the distribution of the cost of dealing with crop surpluses over the marketed units of the crop whose producers are benefited by such assistance. * * *

The solution of this problem will be a prime and immediate concern of a Democratic administration.

PRESIDENT HOOVER'S POSITION

During the recent campaign Mr. Hoover, in his speech of acceptance, said:

The most urgent economic problem in our Nation to-day is agriculture. It must be solved if we are to bring prosperity and contentment to one-third of our people directly and to all of our people indirectly. We have pledged ourselves to find a solution * * *.

The working out of agricultural relief constitutes the most important obligation of the next administration. I stand pledged to these proposals. The object of our policies is to establish for our farmers an income equal to those of other occupations; for the farmer's wife the same comforts in her home as women in other groups; for farm boys and girls the same opportunities in life as other boys and girls.

At a later date, in his St. Louis agricultural speech, Mr. Hoover, in enlarging and amplifying the platform pledges, and in his speech of acceptance relating to the farm program, said:

Its object is to give equality of opportunity to the farmer. I would consider it the greatest honor I could have if it should become my privilege to aid in finally solving this the most difficult of economic problems presented to our people and the one which by inheritance and through long contact have my deepest interest * * *.

In this speech the presidential candidate advised the country of the kind of a farm board we would have. He said:

We propose to create a Federal farm board composed of men of understanding and sympathy for the problems of agriculture; we propose this board should have power to determine the facts, the causes, the remedies which should be applied to each and every one of the multitude of problems which we mass under the general term "the agricultural problem."

While President Coolidge has vetoed two farm bills, largely because of the vast powers proposed to be delegated to the farm board, Mr. Hoover, in his St. Louis speech, outlined the powers he proposed to have delegated to such board. He said:

The program further provides that the board shall have a board authority to act and be authorized to assist in the further development of cooperative marketing; that it shall assist in the development of clearing houses for agricultural products, in the development of adequate warehousing facilities, in the elimination of wastes in distribution, and in the solution of other problems as they arise * * *.

It is proposed that this board should have placed at its disposal such resources as are necessary to make its action effective.

Thus, we give to the Federal farm board every arm with which to deal with the multitude of problems. This is an entirely different method of approach to solution from that of a general formula. It is flexible and adaptable. No such far-reaching and specific proposals have ever been made by a political party on behalf of any industry in our history * * *.

PLAN OF REPUBLICAN PARTY

In the light of recent developments we may well pause for a moment to consider what the major party in its convention platform declaration promised the farmer. In this declaration we find the following:

The Republican Party pledges itself to the enactment of legislation creating a Federal farm board clothed with the necessary powers to promote the establishment of a farm marketing system of farmer owned and controlled stabilization corporations or associations to prevent and control surpluses through orderly distribution.

The Republican Party did not officially promise to enact any legislation that would directly help the farmer. It promised only to create a board and to delegate to such board "the necessary powers" to solve the problem.

After eight years of effort the Republican Party, acting through its delegates, condemned the farm-problem solution proposed by two Congresses under its complete control, and, confessing its inability to find a solution, decided to have the Congress pass a bill creating a farm board and then to look to this board to perform the miracle of aiding the farmer without doing anything to raise the price of the things the farmer produces.

Again let me call attention to the last pledge in the Republican farm plank declaration, as follows:

The Republican Party pledges itself to the development and enactment of measures which will place the agricultural interests of America on a basis of economic equality with other industries to insure its prosperity and success.

The Republican Party pledges that it will develop a measure. Mr. President, what does the term "develop" mean?

Webster's New International Dictionary defines the word as "a gradual advance or growth through a series of progressive changes," and then gives as a synonym the term "evolution."

If the farmers of America must wait for agricultural relief until the Republican Party goes through a series of progressive changes then such relief is as far in the future as those who are opposed to such relief could possibly wish.

INTERPRETATION OF BILLS

Now, Mr. President, with the interpretation just given of the most recent Republican declaration, and the plain pledges of the President, we will examine the pending bills, S. 1, now being considered here, and H. R. 1, now resting upon your desk.

Each bill contains:

First. A declaration of policy—a declaration of congressional intent to "bring about a substantial and permanent improvement in agriculture."

Second. Each bill proposes to create a Federal farm board.

Third. The House bill proposes to delegate to such farm board the "necessary powers" to substantially comply with the party, congressional, and presidential intent.

The Senate bill, however, proposes a plan to give the farmers—that which has already too long been denied—a plan which, admitted by all, will raise the price to the farmer of the things which the farmer produces.

Fourth. During this evolutionary process each bill proposes to authorize the appropriation of the sum of $500,000,000 with which to assist agriculture to regain its economic health.

The balance of the proposed measures sets forth, in a maze of words, hazy provisions relative to commodity advisory councils, stabilization corporations, clearing-house associations, and administrative provisions. If the debenture plan is not finally agreed to then the Senate and House bills are substantially the same.

Lest some who may chance to read the interpretation of the pending bills may be inclined to challenge my analysis, let me reinforce my position with some testimony from reliable authority.

The gentleman from Iowa [Mr. HAUGEN], chairman of the House Committee on Agriculture, in presenting the committee

report on the House bill (H. R. 1), under a heading of "A Program, Not a Panacea," said:

We do not offer the bill which accompanies this report as in and of itself the sum total of agricultural relief. It is entirely clear that such relief can be accomplished only by a program and not by a single bill.

Then followed an outline of the program which the House committee proposes for the relief of agriculture, and as follows:

First. Tariff revision.
Second. Waterway development:
(a) Great Lakes to the sea.
(b) Inland waterway system.
Third. Amendments to:
(a) Federal farm loan bank.
(b) Federal intermediate credit bank.
Fourth. Licensing of shippers.
Fifth. Improvement of canning practices.
Sixth. Improvement of oleomargarine law.
Seventh. Improvement of warehouse law.
Eighth. Reforestation.

This program of progressive changes differs only slightly from the program submitted by the senior Senator from Kansas on May 4. The distinguished and able Senator from Kansas suggests that the farmers of the country must have patience, and that if they will only wait until the Republican Party develops and evolves: First, a sound land policy; second, inland waterways; third, an extension of foreign trade; fourth, lower freight rates; fifth, an extension of research work; sixth, a reduction of the spread between the producer and the consumer; and seventh, reforestation—then such farmers as may still be alive will have and may enjoy full "equality of opportunity."

As further evidence of the correctness of my interpretation, let me quote further from the RECORD. On April 18, page 136, the chairman of the House committee [Mr. HAUGEN], in giving "a brief analysis of the bill" (H. R. 1), after stating the committee intent, said:

The question is, How is it all to be accomplished? As previously stated, no detailed plan is prescribed. The board is charged with the responsibility of selecting the formula to be used in carrying out the policy declared.

On the same day, in the same address as recorded on page 133, in answer to a question as to the operation of the bill propounded by the gentleman from Alabama [Mr. BANKHEAD], the chairman said:

It is left with the board, as I have stated. We are not setting up here any definite plan. We leave that to the board to determine. We must have confidence in the board.

Later, in answer to a question by the gentleman from New York [Mr. SIROVICH], the chairman said:

But, my friend, we must have confidence in the board. We have in the speeches and in our platforms made our purposes clear.

Mr. President, it now appears that the farmers of America must not only wait until the party in power goes through a series of "progressive changes"; must wait until we can develop inland waterways; must wait until we extend our foreign trade; must wait until we improve our canning practices; must wait until our cut-over land can be reforested; and, while they are thus patiently waiting, they must have faith and confidence.

Yet, with this gloomy promise held out to languishing agriculture, we are admonished that this bill is an exact prototype of the pledges made by the Republican Party at Kansas City.

On April 30, as reported on pages 688 and 689 of the RECORD, the junior Senator from Indiana [Mr. ROBINSON] said:

But, Mr. President, the very principles of farm relief advocated by the Republican candidate for President last year and in the Republican platform are in the bill now before the Senate. * * *

The very principles enunciated time and again in the President's acceptance address, in his speech at West Branch, Iowa, and in his speech at St. Louis are all incorporated in this bill, with the exception of the debenture plan, which he has given reasons for being against.

POWER ALREADY DELEGATED

If the plan outlined by the proponents of this legislation is followed, the Congress will create a farm board and delegate to such board full legislative powers to act in matters pertaining to agriculture. Having in mind that the makers of the Constitution placed the legislative branch of the Government first, and gave two-thirds of its attention to the perfection of this division, indicating that it was their plan and hope that the Congress, made up of the agents of the people, should be the real governing power of the new Republic, let me call attention briefly to what has been already and what is now proposed to be done:

We have delegated our powers relative to transportation to the Interstate Commerce Commission.

We have delegated our powers relative to finance to the Federal Reserve Board.

We have delegated our powers relative to appropriations to the President acting through his Budget Bureau.

We are proposing to delegate our powers relative to revenue to the President acting through the Tariff Commission; and in this bill we are proposing to delegate our powers relative to farm relief to the President acting through the Federal farm board.

Mr. President, in every instance where such a delegation of powers is made the Congress confesses its ignorance, its inability, and its inefficiency to perform the duties clearly assigned by the mandate of the Constitution.

I realize that this is an age of consolidation and an age of mergers. Yet I here and now enter a solemn protest against the further delegation of legislative powers, against the further abdication of the prerogatives of the Congress, and a protest against the consolidation and merger of all the powers and responsibilities of the Government in the President of the United States.

FREIGHT RATES

In considering the many plans and ways in which the farmer may be benefited most of those who prescribe a program include a reduction of freight rates. Some who have not given the matter thorough consideration suggest that the Congress should order rates, applicable to farm products at least, reduced. Answering such suggestion, I call attention to the action of the Congress in passing what is known as the Hoch-Smith resolution, a—

resolution directing the Interstate Commerce Commission to take action relative to adjustments in the rate structure of common carriers subject to the interstate commerce act and the fixing of rates and charges.

This act was passed by the Sixty-eighth Congress and approved January 30, 1925.

Acting under the instruction of the Congress, the Interstate Commerce Commission proceeded to order and hold hearings, and now, after more than four years of time, the hearings have been completed and a preliminary report has been made, a copy of which was, by the senior Senator of New York [Mr. COPELAND], presented to the Senate and made a part of the record only a few days ago.

In the regular course of business a new schedule of rates will be suggested and ordered into effect. Whereupon we expect that the railways affected will seek and secure an injunction against such rates until the whole matter may be presented to and decided by the courts. This will involve court hearings and decisions, motions, rehearings, and appeals until finally the matter is ended by a decision by the Supreme Court of the United States.

Four years have already gone by, and it is safe to estimate that it will be that far into the future before we have any definite action under the congressional resolution passed four years ago. And even after eight or ten years of constant efforts it may be that no reduction in rates will have been secured, which will, even in a small way, aid in the restoration of agriculture.

Under our present system rate adjustments must be initiated by the Interstate Commerce Commission, but in the end such rates as are finally placed in effect are those which are practically approved by the Supreme Court of the United States.

In support of my interpretation of the procedure necessary to secure any reduction of existing freight rates, I here present and ask to have printed at this point some extracts from the leading cases bearing upon this question.

In the case of United States, Interstate Commerce Commission, National Council of Traveling Salesmen's Associations, and others against New York Central Railroad Co. and others, reported in United States Reports 263, page 603, in an appeal from the District Court of the United States for the District of Massachusetts, it was held as follows:

1. Under the act of August 18, 1922, amending section 22 of the interstate commerce act, the rates for interchangeable mileage coupon tickets must be just and reasonable (p. 609).

2. Where the commission's conclusion that a reduced rate fixed by it for such tickets was just and reasonable was contradicted by its findings of fact and was obviously based on a misconception of the amendment as requiring a reduction, held, that the conclusion was one of law and not binding on the court.

In reviewing the questions involved in what is known as the Minnesota Rate cases (vol. 230 U. S. 354) the court, in passing

upon the question as to whether or not such rates were confiscatory, held that—

The rate-making power is a legislative power and necessarily implies a range of legislative discretion.

This court does not sit as a board of review to substitute its judgment for that of the legislature or of the commission lawfully constituted by it as to matters within the province of either.

The question involved is whether, in prescribing a general schedule of rates involving the profitableness of the intrastate operations of the carrier, taken as a whole, the State has superseded the constitutional limit by making the rates confiscatory.

While the property of railroad corporations has been devoted to a public use, the State has not seen fit to undertake the service itself and the private property embarked in it is not placed at the mercy of legislative caprice but rests secure under the constitutional protection which extends not merely to the title, but to the right to receive just compensation for the services given to the public.

For fixing rates the basis of calculation of value is the fair value of the property of the carrier used for the convenience of the public. (Smyth *v.* Ames, 169 U. S. 466.)

There is no formula for the ascertainment of the fair value of property used for convenience of the public, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.

Where a carrier does both interstate and intrastate business, to determine whether a scheme of maximum intrastate rates affords a fair return the value of the property employed in intrastate business and the rates prescribed must be considered separately, and profits and losses on interstate business can not be offset.

Assets and property of a carrier not used in the transportation business can not be included in the valuation as a basis for rate making.

Property of a railroad company can not be valued for a basis of rate making at a price above other similar property solely by reason of the fact that it is used as a railroad, and increases in value over cost can not be allowed beyond the normal increase of other similar property.

In valuing the plant of a carrier for purpose of fixing rates there should be proper deductions for depreciation.

Where the constitutional validity of State action is involved general estimates of division between interstate and intrastate business can not be accepted as adequate proof to sustain a charge of confiscation.

In Smyth *v.* Ames, Smyth *v.* Smith, Smyth *v.* Higginson (169 U. S. 446) in appeals from the Circuit Court of the United States for the District of Nebraska, the Supreme Court of the United States held that—

It is settled that—

(1) A railroad corporation is a person within the meaning of the fourteenth amendment declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(2) A State enactment, or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment to the Constitution of the United States.

(3) While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and, therefore, without due process of law, can not be so conclusively determined by the legislature of the State or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.

It is interesting to discover, however, that no Member of the Senate has, so far in this debate, suggested that, as a practical matter, freight rates can be reduced.

The courts have uniformly held that a railway company is a person within the meaning of the law, and that no State shall deprive any railway/person of property without due process of law.

Freight and passenger rates, made and ordered into effect by any governmental regulatory body, which are so low as to deprive the railway company of a fair, just, and reasonable return, have been, without exception, held to be confiscatory and, therefore, repugnant to the fourteenth amendment to the Constitution of the United States.

The program of the President, as well as of those who have discussed the matter, is to bring about a reduction of freight rates for the construction and development of a system of inland waterways over which nonperishable products could be transported at less costs than is now possible over our railway systems. Even this plan is of doubtful value for the purposes mentioned. If such a system were constructed and a certain class of freight were diverted to such transporting channels, it is self-evident that the existing railway lines would be deprived of the revenue from the tonnage thus diverted, and, thereupon, we might expect an application to be made and granted for an increase in rates on the perishable commodities to compensate for the loss of revenues on the commodities, goods, and wares transported on the newly developed and operating waterways.

Mr. President, reduced freight rates over inland waterways will come as a substantial aid to the farmer, along with reforestation, progressive changes in the Republican Party, and the millenium.

Mr. President, in conclusion let me say that while I have some amendments to suggest to the pending measure, irrespective of whether or not any of such amendments are adopted, I will vote for the passage of the bill. I will vote for it for the reason that its passage will commit the Government to the policy of granting relief to agriculture and having committed ourselves to such a policy I have an abiding faith in the fairness of the great majority of our citizenship, that they will see to it that such relief, in a substantial way, is speedily provided.

RECESS

Mr. WATSON. I move that the Senate take a recess until to-morrow at 12 o'clock noon.

The motion was agreed to; and the Senate (at 4 o'clock and 45 minutes p. m.) took a recess until to-morrow, Friday, May 10, 1929, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES

THURSDAY, *May 9, 1929*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, at Thy mercy seat we would humbly bow, beseeching Thee to forgive our sins and let Thy love acquaint us that Thou dost pardon as we forgive. As our country has set its seal upon this Congress and clothed it with the mantle of authority, Holy Spirit of God, give wise guidance to our Speaker and all Members and impress them that the deed is the man. In all situations may we hold on to our honor and keep our conscience clear. The Lord preserve our homes, where pour our thoughts and joys, for there are no such bonds on earth so tender and sublime. Strengthen our faith in humanity. As it takes two to be glad, lead us to seek always wholesome fellowship. When time comes creeping along and it is often so hard to be brave and happy, be Thou our great Companion. Through Jesus Christ our Lord. Amen.

The Journal of the proceedings of Tuesday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed the following resolution:

Senate Resolution 56

Resolved, That the Senate has heard with profound sorrow the announcement of the death of Hon. JOHN J. CASEY, late a Representative from the State of Pennsylvania.

Resolved, That a committee of six Senators be appointed by the Vice President to join the committee appointed on the part of the House of Representatives to attend the funeral of the deceased Representative.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased.

Resolved, That as a further mark of respect to the memory of the deceased the Senate do now take a recess until 11 o'clock a. m. to-morrow.

The message also announced that the Senate had passed a joint resolution of the following title, in which the concurrence of the House is requested:

S. J. Res. 34. Joint resolution authorizing the Smithsonian Institution to convey suitable acknowledgment to John Gellatly for his offer to the Nation of his art collection and to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the collection.

The message also announced that the Senate insists upon its amendment to the joint resolution (H. J. Res. 59) entitled "Joint resolution to extend the provisions of Public Resolution No. 92, Seventieth Congress, approved February 25, 1929," disagreed to by the House; agrees to the conference asked by the